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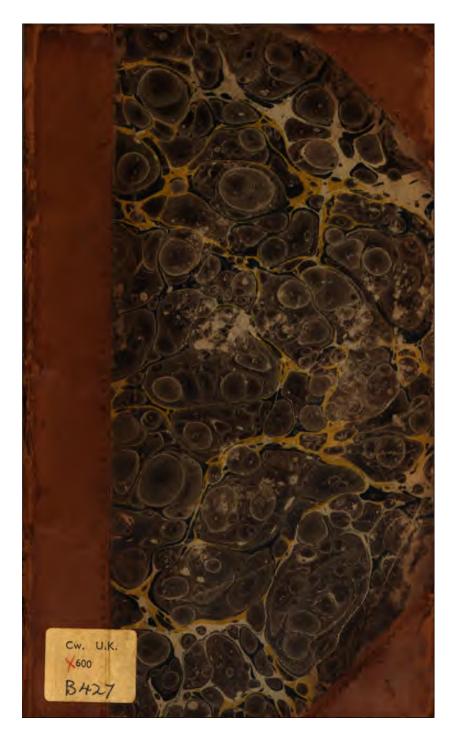
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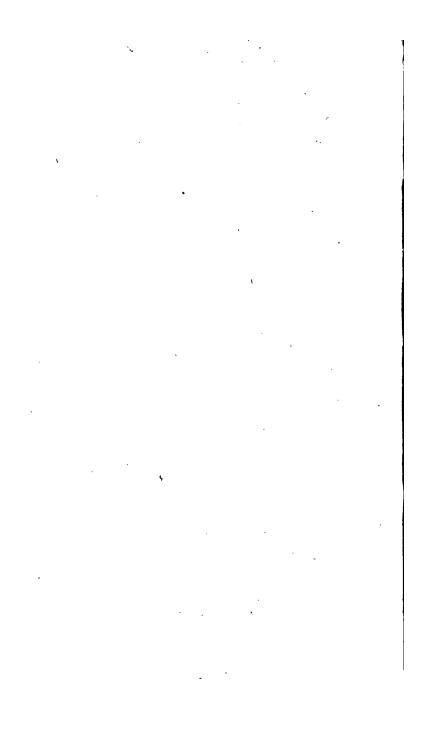


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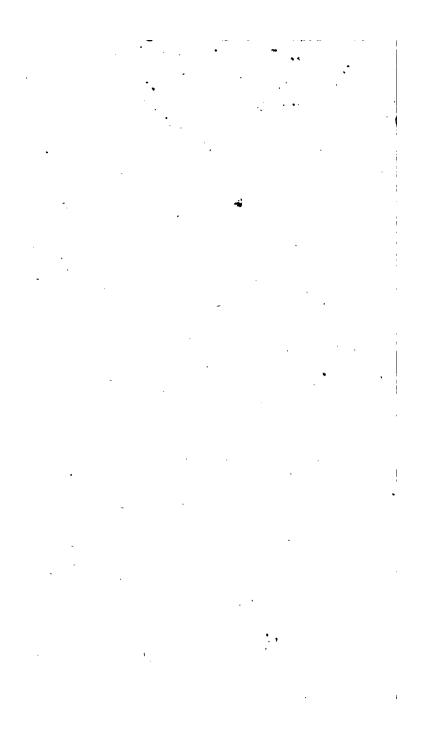
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SUMMARY

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THE LAWS

PECULIARLY AFFECTING

PROTESTANT DISSENTERS.

WITH

AN APPENDIX,

CONTAINING

ACTS OF PARLIAMENT, TRUST DEEDS, AND LEGAL FORMS.

By JOS. BELDAM,

OF THE MIDDLE TEMPLE, ESQUIRE,

BARRISTER AT LAW.

LONDON:

JOSEPH BUTTERWORTH AND SON,

8. Jun 1827. A. 11.

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PREFACE.

THE arrangement of this volume is not original: its form was suggested by that of a slender digest appended to a history of the Dissenting Deputies,—the recommendation consists in its natural division of a subject extremely intricate and perplexed.

In the SUMMARY, which proposes to present an Epitome of the subsisting Laws, concentration has been the Author's principal aim; but a concise historical sketch of the progress of these laws is prefixed, as being calculated to elucidate the subject and to make it more generally interesting.

A copious Appendix, containing the most important Acts of Parliament cited in the body of the work; together with oaths, declarations, trust-deeds, and various legal forms is subjoined.

It will be observed, that in determining the legal character of non-conformity, the author has adopted the definition of Blackstone; it being more easy, in his humble judgment, to conceive the expediency of tolerating a negative offence, than to defend the injustice of punishing positive and admitted innocence.

Political considerations apart, the tendency of the present work, will probably be to shew the propriety of entirely new enactments: but whether such enactments ought more clearly to define and perpetuate the ancient laws, securing to Protestant Dissenters by less equivocal provisions the immunities and privileges they at present enjoy; or whether, on a broader principle of legislation, it were better to abolish the ancient system, and [to enforce such modern restrictions as may be thought necessary by modern sanctions alone, must be left to the legislature to decide.

On a review of the obligations incurred in the completion of this little work, the Author, although not apprehensive of being overwhelmed by their number, feels too grateful for the few instances of courtesy that have been shewn him, to omit, willingly, the mention of them.

From Mr. Archbold's kind communications he has derived much valuable information, which he now takes leave to acknowledge.

To Mr. GALE, for the polite communication of the manuscript judgment in the important case of the Attorney General v. Fletcher and others; and to the Clerk of the Society of Quakers, for the ready facilities afforded by that gentleman, in his department, he is, respectively, much indebted.

Nor could he without injustice forget the service of his friend Mr. RICHARD MATTHEWS, of Gray's Inn, whose skill in conveyancing has greatly assisted in preparing the deeds of trust inserted in the Appendix; they will be found more complete it is hoped, as they certainly are, in some respects, much more consonant to the wishes of the Lord Chancellor, than any that have yet appeared.

The Author will be permitted to conclude by remarking, that the diminutive size of his work, which by some may be imagined to have lessened his labour, has not been, in reality, the least difficulty with which he has had to contend in its compilation.

^{2,} GARDEN COURT, MIDDLE TEMPLE, 20th April, 1827.

CONTENTS.

HISTORICAL SKETCH OF THE LAWS AFFECTING PROTESTANT DISSENTERS.

SUMMARY OF THE LAWS AFFECTING PROTESTANT DISSENTERS.

INTRODUCTION.

Of the Rights and Duties of Protestant Dissenters in general—Of Penal Enactments in general—Of the effect of the Toleration Acts—Of Penal Enactments considered in relation to the parties they particularly affect.

PART I.

Of the Laws affecting Protestant Dissenters generally.

CHAP. I.

Of their Civil Disabilities and Exemptions.

Sec. I.—Of the Sacramental Test.

1. As a Qualification for office under the Corporation Act.

2. As a Qualification for office under the Crown.

SEC. II.—Of Indemnities from Penalties under these Enactments.

SEC. III.—Of Exemptions from Service under these Enactments.

SEC. IV.—Of Qualifying for Degrees in the English Universities.

SEC. V.—Of Exclusion from Ecclesiastical Preferment.

SEC. VI.-Of the Marriage Rite.

SEC. VII.—Of the Civil Disabilities and Exemptions of Quakers and Moravians.

1. Of Oaths generally.

2. Of Oaths to Government.

3. Of Tithes.

4. Of Military Service.

5. Of the Marriage Rite.

6. Of Miscellaneous Provisions.

CHAP. II.

Of the Religious Restrictions of Protestant Dissenters.

SEC, I.—Of the effect of the Toleration Act and other remedial acts on these Restrictions.

SEC. II.—Of Heresy and its Incidents.

1. Of Heresy.

2. Of Reviling the Established Religion.

 Of wantonly depreciating the Prayer Book, or persuading a Clergyman to use another Form of Prayer.

SEC. III.—Of Recusancy and its Incidents.

1. Of Recusancy.

- Of Recusants persuading others to absent themselves, or impugn the King's Ecclesiastical Authority.
- Of attending another Service than that of the Book of Common Prayer.
- Of being present at unlawful Conventicles, after monition, and obstinate refusal to attend at Church.

5. Of permitting unlawful Conventicles to be held.

CHAP. III.

Of Oaths and Declarations.

SEC. I.—Of requiring Oaths and Declarations.
SEC. II.—Of voluntarily taking and making them.

PART II.

Of the Laws peculiarly affecting the Protestant Dissenting Clergy.

CHAP. I.

Of Penalties.

SEC. I.—Of such as are not conditionally repealed. SEC. II.—Of Penalties conditionally repealed.

On Qualifying for Office.

2. On Preaching in certified places.

3. Of Subsisting Liabilities.

CHAP. II.

Of Immunities and Exemptions.

SEC. I .- From Civil and Military Service and Office.

 Of Dissenting Ministers in trade; being teachers of separate congregations.

2. Of Dissenting Ministers not in trade.

SEC. II.—Exemption from Taxes, &c.

CHAP. III.

Of Rights and Liabilities.

SEC. I.—Of Election, Admission to, and Duration in Office.

SEC. II.—Of Suspension, Removal, and Restoration.

SEC. III.—Of Devises and Legacies.
SEC. IV.—Of Votes for Members of Parliament.

SEC. V.—Of Actions, &c.

PART III.

Of the Laws peculiarly affecting Protestant Dissenting Schoolmasters.

CHAP. I.

Of Qualifications.

Sec. I.—Of Oaths to Government.

Sec. II.—Of Specially qualifying.

SEC. III.—Of Penalties.

CHAP. II.

Of Rights and Disabilities.

SEC. I .- Of the Rights and Disabilities of Schoolmasters.

SEC. II.—Of Charity and Free Schools.

PART IV.

Of the Laws relating to Protestant Dissenting Places of Worship.

CHAP. I.

Of Restrictive Enactments.

Sec. I.—Of Assemblies not requiring Registration.

Sec. II.—Of Assemblies requiring Registration. Sec. III.—Of Open Assemblies.

CHAP. II.

Of Protective Enactments.

Sec. I.—Of Disturbing a Lawful Assembly.

Sec. II.—Against riotously pulling down, damaging and injuring Places of Worship.

CHAP. III.

Of Exemptions and Liabilities .- Of Rates and Taxes.

CHAP. IV.

Of the Jurisdiction of Courts of Law and Equity.

SEC. I .- Of the Subject generally.

SEC. II.—Of the Charities and Trusts of Protestant Dissenters.

Szc. III.—Of Trustees and Congregations.

SEC. IV.—Of the Jurisdiction of the Court of Chancery.

APPENDIX.

(A).

No. 1. Statute 1 W. and M. s. 1, c. 18, usually called 'The . Toleration Act.'

No. 2. Statute, 19 Geo. 3, c. 44, 'An Act for the further relief

of Protestant Dissenting Ministers and Schoolmasters.

No. 3. Statute 52 Geo. 3, c. 155, 'An Act to repeal certain Acts, and amend other Acts relating to Religious Worship and Assemblies, and persons teaching or preaching therein.'

No. 4. Statute 53 Geo. 3, c. 160, An Act to relieve persons who impugn the doctrine of the Holy Trinity from certain

penalties.

No. 5. Oaths of Allegiance, Supremacy, and Abjuration—Declaration against Transubstantiation—Against Popery—Of Fidelity, by Quakers—Form of Affirmation, when used instead of an Oath—Affirmation of Abjuration—Form of Affirmation to be used by Moravians instead of an Oath.

No. 6. Indictment for disturbing a Congregation of Protestant Dissenters.

- No. 7. Form of Certificate of a Chapel, Meeting House, or Burial Place—to the Quarter Sessions—to the Bishop—to the Archdeacon.
- No. 8. Form of Certificate of Birth for Registration, at Dr. Williams's Library.

(B).

No. 1. Trust-deed for a Dissenting Chapel by Lease and Release.

No. 2. Trust-deed for a Wesleyan Chapel.

No. 3. New Appointment of Trustees by Indorsement.

No. 4. Form of Legacy for charitable Purposes—for the use of the Minister for the time being—for the use of the Poor—for the use of the Chapel.

·	
TABLE OF STATUTES QUOTED.	
CORPORATION ACT.	MARRIAGE (continued).
13 Car. 2, st. 2, c. 1.	26 Geo. 2, c. 33.
1 Geo. 1, st. 2, c. 13.	53 Geo. 3, c. 160.
5 Geo. 1, c. 4.	OTTA TERMS
c. 6.	QUAKERS.
TEST ACT.	31 Ed. 3, c. 11.
25 Car. 2, c. 2.	21 Hen. 8, c. 5.
30 Car. 2, st. 2.	13 & 14 Car. 2, c. 1.
1 W. & M. s. 1, c. 18.	16 Car. 2, c. 4.
1 Geo. 1, st. 2, c. 13.	I W. & M. s. 1, c. 18.
2 Geo. 2, c. 31.	7 & 8 W. 3, c. 6.
9 Geo. 2, c. 26.	
16 Gea. 2, c. 3.	3 & 4 Ann. c. 18.
18 Geo. 2, c. 11.	10 Ann. c. 2.
6 Geo. 3, c. 53.	1 Geo. 1, st. 2, c. 6.
6 Geo. 4, c. 3.	8 Geo. 1, st. 2, c. 6.
	13 Geo. 2, c. 7.
COMMUNION.	c. 8.
1 Ed. 6, c. 1.	22 Geo. 2, c. 27.
-in critical in costs a territoria	c. 30. (Moravians).
PRAYER BOOK, and JURIS-	23 Geo. 2, c. 36.
DICTION of the CROWN.	24 Geo. 2, c. 15.
2 & 3 Ed. 6, c. 21.	26 Geo. 2, c. 30.
3 & 4 Ed. 6, c. 10.	c. 33.
6 & 6 Ed. 6, c. 1.	c. 38.
l Eliz. c. l.	e. 94.
c. 2.	27 Geo. 2, c. 20.
5 Eliz. c. 1.	28 Geo. 2, c. 13.
13 & 14 Car. 2, c. 4.	30 Geo. 2, c. 24.
TOOL POLACTICAL DEPET	6 Geo. 8, c. 20.
ECCLESIASTICAL PREFER- MENT.	c. 94.
	7 Geo. 3, c. 23.
13 Eliz. c. 12.	14 Geo. 3, c. 12.
13 & 14 Car. 2, c. 14.	15 Geo. 3, c. 38.
MADDIACE	17 Geo. 3, c. 56.
MARRIAGE.	19 Geo. 3, c. 66.
25 Hen. 8, c. 22.	
28 Hen. 8, c, 7,	21 Geo. 3, e. 3.
32 Hen. 8, c. 38.	25 Geo. 3, c. 40.
1 Eliz. c. 1.	26 Geo. 3, c. 108.

	The state of the s
QUAKERS (continued).	HERESY (continued).
37 Geo. 3, c. 112,	1 Eliz.c. 1.
38 Geo. 3, c. 38.	9 & 10 W, 3, c. 82.
42 Geo. 3, c. 72.	6 Geo. 1, c. 5.
c. 90.	53 Geo. 3, c. 127.
	c. 160.
43 Geo. 3, c. 117,	57 Geo. 3, c. 70.
44 Geo. 3, c. 89.	0. 000. 0, 0. 70.
45 Geo. 3, c. 14.	DELITE TAKE A STORY AND ADDRESS OF
c. 41	REVILING the ESTABLISHED
c, 41. c. 66.	RELIGION.
46 Geo. 3, c, 90.	1 Ed. 6, c. 1.
c. 91.	1 Mary, s. 2, c. 2.
47 Geo. 3, c. 132,	l Eliz. c. 1.
48 Geo. 3, c. 97.	1
	HIGH COMMISSION COURT.
50 Geo. 3, c. 14.	16 Car. 2, c. 11.
51 Geo. 3, c. 69.	
52 Geo. 3, c. 38.	DEPRECIATING THE
c. 68. c. 75.	PRAYER BOOK.
c. 75.	1 Eliz. c. 2.
c. 102.	1 1m2. C. 2.
c. 185.	
53 Geo. 3, c. 162.	TOLERATION ACTS.
c. 127.	1 W. & M. s. 1, c. 10.
54 Geo. 3, c. 48.	10 Ann. c. 2.
c. 111.	6 Geo. 1. c. 4 (Ire).
55 Geö. 3, c. 44.	19 Geo. 3, c. 44.
c. 96.	19 & 20 Geo. 3, c. 6 (Ire).
56 Geo. 3, a. 5.	52 Geo. 3, c. 155.
c. 56,	53 Geo. 3, c. 160.
c. 56. c. 76.	57 Geo. 3, c. 70.
57 Geo. 3, c. 26.	
c, 34.	D TOTTO A STOTE
58 Geo. 3, c. 22.	RECUSANCY.
1 Gep. 4, c, 19.	5 & 6 Ed. 6, c. 1.
c. 24	1 Eliz. c. 2. 23 Eliz. c. 1.
3 Geo. 4, c. 75.	23 Eliz. c. 1.
4 Geo, 4, c. 76.	29 Eliz. c. 6.
2 0000 27 66 101	35 Eliz. c. 1.
HERESY.	l Jac. 1, c. 4.
2 Hen. 4, c. 5.	3 Jac. 1, c.4.
2 Hen. 5, c. 7.	c. 5.
	16 Car. 2, c. 4.
23 Hen. 8, c. 9.	22 Car. 2. r. 1.
25 Hen. 8, c. 14.	52 Geo. 3, c. 155.
27 Hen. 8.	1
31 Hen. 8, c. 14.	PERSUADING OTHERS TO
34 & 35 Hen. 8, c. 1.	
35 Hen. 8, c. 5.	BE RECUSANTS.
1 Ed. 6, c. 12,	35 Eliz. c. 1.
	1

ATTENDING ANOTHER SERVICE. 5 & 6 Ed. 6, c. 1. 1 Eliz. c. 2. 1 Jac. 1, c. 25. 1 W. & M. s. 1, c. 18.

BEING PRESENT AFTER ADMONITION. 35 Eliz. c. 1.

PERMITTING UNLAWFUL CONVENTICLES.

16 Car. 2, c. 1. 52 Geo. 3, c. 155.

OATHS and DECLARATIONS. 25 Hen. 8, c. 19.

1 Eliz. c. 1. 5 Eliz. c. 1. 3 Jac. 1, c. 4. 7 Jac. 1, c. 6. 25 Car. 2, c. 2. 25 Car. 2, st. 2. 30 Car. 2, st. 2. 1 W. & M. s. 1, c. 18. 7 & 8. W. 3, c. 27. 13 & 14 W. 3, c. 6.

1 Ann. s. 1, c. 22. 5 Ann. c. 8.

6 Ann. c. 7. 1 Geo. 1, st. 2, c. 13. 8 Geo. 1, c. 6.

9 Geo. 2, c. 26, 16 Geo. 2, c. 30.

22 Geo. 2, c. 46. 6 Geo. 3, c, 53. 19 Geo. 3, c. 44.

31 Geo. 3, c. 32. 52 Geo. 3, c. 155. 55 Geo. 3, c. 184.

DISSENTING CLERGY. 1 Eliz. c. 2.

13 & 14 Car. 2, c. 4. 15 Car. 2, c. 6.

17 Car. 2, c. 2.

22 Car. 2, c. 1.

DISSENTING CLERGY (continued).

1 W. & M. s. 1, c. 18.

10 Ann. c. 2. 1 Geo. 1, st. 2, c. 13.

9 Geo. 2, c. 26, 19 Geo. 3, c. 44.

42 Geo. 3, c. 90.

43 Geo. 3, c. 10. 46 Geo. 3, c. 90.

48 Geo. 3, c. 55, (Sch. I).

52 Geo. 8, c. 88. ---- с. 155.

53 Geo. 3, c. 160. 6 Geo. 4. c. 40.

SCHOOLMASTERS and EDU-CATION.

23 Eliz, c. 1.

1 Jac. 1, c. 4. 13 & 14 Car. 2, c. 4.

17 Car. 2, c 2. 1 W. & M. s. 1, c. 18.

13 & 14 W, 3, c. 6. 1 Ann. c. 22.

10 Апл. с. 2. 12 Ann. st. 2, c. 7.

1 Geo. 1, st. 2, c. 13.

5 Geo. 1, c. 4. 19 Geo. 3, c. 44.

52 Geo, 3, c. 155. 58 Geo. 3, c. 91.

59 Geo. 3, c. 81.

PLACES OF WORSHIP.

22 Car. 2, c. 1. 1 W. & M. s. 1, c. 18.

7 Ann. c. 9. 1 Geo. 1, st. 2, c. 5.

10 Geo. 2, c. 22.

38 Geo. 3, c. 5.

42 Geo. 3, c. 116.

43 Geo. 3, c. 161, (Sch. A).

46 Geo. 8, c. 133. 49 Geo. 3, c. 67.

52 Geo. 3, c. 155.

57 Geo. 3, c. 19. 3 Geo. 4, c. 33.

HISTORICAL SKETCH

OF

The Laws

AFFECTING

PROTESTANT DISSENTERS.

A CONCISE sketch of the various penal and remedial enactments affecting Protestant Dissenters, which have emanated from the legislature of this country in successive periods of its history, will be deemed by none inappropriate as an introduction to a summary of the existing laws. It may be esteemed essential, by those, who, duly estimating the importance of adhering in the substance of the work to the contemplation of laws actually in force, in order to preserve an unity of impression on the mind of the reader, are, nevertheless, aware that the subject cannot be fully understood, nor its merits appreciated, without pushing the inquiry beyond the limits which define its present extent.

In either point of view the design admits of justification.

Progress of the Reformation.

The many attacks which, so early as the reign of Richard II., and, in some few instances, anterior to that period, had been made on the papal power in this country, ended at length in its total abolition in the reign of Henry VIII. The short life of his successor, was almost wholly occupied with his favourite scheme of reformation. He began by establishing the communion in both kinds (a); and proceeded to fix the doctrines, and settle the polity of the new church in a body of articles. of divine worship, and administration of the sacraments, were then first set forth in the book of Common Prayer, and established by the Act of Uniformity, and every other mode of worship was prohibited under severe penalties. Other ecclesiastical regulations of minor importance followed, and some alterations and additions were made to the Prayer Book. particularly in the forms of consecration (b).

Queen Mary repealed all her brother's laws respecting religion, and restored the papal authority and faith to the condition they held prior to the 20th year of her father's reign.

On the accession of Elizabeth, the national religion again underwent a change: the statutes of Mary were repealed, and those of Edward revived (c). From the articles framed and published by him were now selected and compiled the thirty-nine which comprise the doctrine and polity of the present church. The book of Common Prayer received aditional alterations (d). All foreign authority was again

⁽a) 1 Ed. VI., c. 1, s. 7, (b) 5 & 6 Ed. VI., c. 1; 3 & 4 Ed. VI., c. 10: 2 & 3 (d) 1 Eliz., c. 2.

abolished, and the ecclesiastical jurisdiction finally annexed to the crown (a).

The Prayer Book received some further additions Constituin the reign of Charles II., and all the laws at that tion of the established time in force for the uniformity of prayer and ad-church. ministration of the sacrament, were declared to extend to the book so amended, and to no other (b). Since that period no alterations have been made in the constitution of the established church.

The religion of the state being settled, the first Laws enefforts of the legislature were directed to compel a acted to compel constrict conformity to it. The ancient laws against formity. heresy, originally simed at the tenets of the reformed Repeal of church, were repealed, it is true, at an early period of laws against heresy. the reign of Edward VI.(c); and this offence remains, at the present day, amenable only to the common law (d), and ecclesiastical cognizance.

It became an object of great moment to protect the Laws enservice and secure the fidelity of the ministers of the acted to established worship; and, accordingly, many enact-church, and ments were made to effect these purposes; one or two secure the fidelity of only of which wilt fall hereafter within the scope of its ministhis treatise (e).

Another important end to be attained, was the Attendance regular attendance of the laity on the established at church. worship. For its accomplishment, the legislature spared no pains.

The ecclesiastical courts, it seems, have always been invested with the power of enforcing attend-

⁽a) 1 Eliz., c. 1, s. 16, 17; (c) 1. Ed. Vl., c. 12, s. 2. 27 to 31; 34 to 88.; and 5 (d) Sed vide, 3 Merrivale, Eliz., c. 1, sh. 1, 2, 3, 4, 10. 379 (a). (e) Vide infra, p. 9. (b) 13 & 14 Car. II., c. 4.

ance on divine worship: but their power has been corroborated and confirmed by various statutes.

The 5th and 6th Ed. VI., revived by 1 Eliz... c. 2. enjoins the observance of this duty, under the sanction of fines and imprisonment; which were augmented and increased to a barbarous degree, by subsequent statutes in the reign of Elizabeth, explained and enlarged by a statute of James I. (a).

Persuading persons to absent themselves, or impugn the king's ecclesiastical authority. Attending

at unlaw-

ticles.

ful conven-

Similar severities were adopted against those who persuaded others to absent themselves from divine worship, or impugn the ecclesiastical authority of the prince; on legal conviction of which offences, the punishment extended to abjuration of the realm for life, and forfeiture of property (b).

Attending at other forms of worship, not authorized by law, was subjected, by a statute of Elizabeth. which revived a statute of her brother Edward, on a third offence, to imprisonment for life (c).

Abolition of episcopacy, and repeal of laws senters. Their revival and increased severity.

The short interregnum occupied by Cromwell, produced no permanent alteration in the views of the legislature; for although during the commonwealth against dis- episcopacy was abolished, and the penal laws against Protestant Dissenters repealed; yet the restoration of Charles II. revived and reinstated them. statute passed in this reign, which exhibits feelings of extreme acrimony, the last-mentioned offence was made punishable in the first and second instance, by fine and imprisonment; but in the third, by transportation for seven years, and sequestration

³ Jac. I., c. 4. (a) 5 & 6 Ed. VI., c. 1, s. 2, revived by 1 Eliz., c. 2; 23 (b) 35 Eliz., c. 1. (c) 1 Eliz., c. 2. Eliz., c. 1; 29 Eliz., c. 6;

of goods to the sheriff, for the payment of expenses incurred in the execution of his duty: and in default of these, the offender might be sold by the sheriff, and sent out to work as a labourer in the Colonies for five The same penalties attached to the offence of suffering conventicles to be held; and justices of the peace were empowered to employ military force, and break open suspected houses on denial of admittance. This statute, containing many other oppressive clauses, was limited to the period of three years (a).

It was followed, within a few years, by another statute, popularly called the 'Conventicle Act' (b).

By this statute, if any person of the age of sixteen years is present at any conventicle consisting of five persons beside the houshold, justices of the peace are individually required, under a penalty, to certify the same to the Quarter Sessions, and the offender is rendered liable to a penalty, to be levied on his goods, and in default thereof, on the goods of any other person then convicted of the like offence, so that the same do not amount to more than the sum of 10% for one meeting. And persons suffering any con-Suffering venticle to be held on their premises, forfeit, on conconventicles
to be held. viction, the sum of 201., of which, in case of poverty, 10%. may in like manner be levied on any other person present. A clause is introduced, intended, though ineffectually, to take away the jurisdiction of the court of King's Bench; and justices of the peace and military officers are empowered to break open doors when they are informed that such a conventicle is held; to take the persons assembled into custody;

(b) 22 Car. II., c. 1, repeal-

⁽a) 16 Car. II., c. 4. ed by 52 Geo, III., c. 155.

and use the best means to dissolve and prevent such meetings: and constables are fined for neglecting to enforce this act, which it is directed, shall be construed most favourably for the suppression of conventicles; and no proceedings under it be avoided for defect of form.

Reviling the established religion. Reviling the established religion had always been an offence amenable to the common law and ecclesiastical cognizance; but by a statute of Edward VI., revived by Elizabeth (a), reviling the sacrament, an offence, indeed, more likely to be committed by Roman Catholics than Protestant Dissenters, is subjected to punishment by fine and imprisonment at discretion: and by the last mentioned statute, wantonly depreciating the Prayer Book, exposes the offender for the third offence to forfeiture of goods and imprisonment for life (b).

Motives of the legislature.

By such acts as these, the legislature endeavoured to establish an uniform system of faith and mode of worship throughout the realm: but the policy of government did not more sincerely spring from a love of uniformity and the decencies of religion, than from a regard to its own safety, greatly endangered, it must be admitted, at various periods, by the intrigues of a numerous and disaffected party, attached chiefly to the tenets of the repudiated church. To this latter motive it were charitable to attribute most

(a). 1 Ed. VI., c. 1, s. 1, repealed by 1 Mary, sess. 2, c. 2, but revived by 1 Eliz. c. 1, s. 14. unconstitutional designs, having been abolished by the 16 Car. II., c. 11, was vainly attempted to be revived by James II. The court of Star Chamber, of Common Law antiquity, but confirmed by several statutes, was abolished at the same time.

⁽b) The high commission court, created by Elizabeth under colour of restoring the supremacy to the crown, but in reality with inquisitorial and

of the impositions and restrictions on civil liberty, which have disgraced so considerable a portion of our history.

Soon after the restoration, it was deemed expedient Test and to exclude more effectually from all civil and military corporation acts. service under government (with but few exceptions), and also from offices and stations of trust and responsibility in corporations, all persons who refuse to conform to the established religion. To accomplish this object, the Test (a) and Corporation (b) Acts passed, which add to the oaths formerly required of such persons, the taking of the sacrament according to the forms of the Church of England.

These statutes, amended and explained by others. of a more recent date, being treated at large in the Summary, it will suffice, in this chapter, to state that their direct and immediate effect has been, to exclude Protestant Dissenters from places of emolument and honour in the state, by imposing on them a test incompatible with their religious principles.

The English Universities, entertaining the same English political views, have enacted laws for their own Universigovernment, which virtually exclude dissenters from academical degrees; and various statutes, concurring with the canons of the church in requiring conformity of those who aspire to ecclesiastical honours and emolument, effectually prevent them from attaining preferment in the church (c).

The Quakers and Moravians were exposed to Quakers peculiar hardships, beyond the ordinary penalties of and Moranonconformity. An act was passed in the reign of

(a) 25 Car. II., c. 2. (c) 13 Eliz., c.12; 13 & 14

⁽b) 13 Car. II., st. 2, c. 1. Car. II., c. 14. Canons passim.

Gharles II., intituled, "An act for preventing the mischiefs and dangers that may arise by certain persons called Quakers, and others, refusing to take lawful oaths" (a); it enacted, that any person refusing to take a judicial oath, persuading another to refuse it, or maintaining the taking it to be unlawful, and all Quakers being of the age of sixteen years, who should assemble to the number of five, under pretence of joining in religious worship, not authorized by the laws of the realm, should on conviction, be punished for the first and second offence by fine, and imprisonment in default of payment, but for the third offence, by abjuration of the realm or transportation.

Three years afterwards it was enacted (b), that all persons lawfully required to take an oath, who refuse, should be transported for seven years, unless they abjure the opinion that oaths are unlawful;—but this enactment was limited to a period of three years.

Protestant Dissenting ministers. It was an essential part of the system pursued by the legislature, to check the exercise of the ministerial function among nonconformists. To that end various restrictive statutes have been passed.

Omitting to use the Prayer Book, or using any other service. By a statute of Elizabeth (c) already alluded to, (and still unrepealed as it regards the dissenting clergy), they are obnoxious to prosecution in all cases, for omitting in their public exercises to use the service of the established church, or for using any other service not enjoined by law; and are liable for the second offence to imprisonment for life.

Officiating

In the reign of Charles II., an act was passed,

(a) 13 & 14Car. II., c. 1, repealed by 52 Geo. III., c. 155.

(b) 16 Car. II., c. 4, (c) 1 Eliz., c. 2, s. 4.

explained by a subsequent act of the same monarch, without which subjects them to penalty and imprisonment ordination, for officiating without episcopal ordination and as- &c. sent to the Book of Common Prayer (a). This was followed, in a few years, by a statute, intituled, "An act for restraining nonconformists from inhabiting in corporations, but commonly called the 'Five-mile Five-mile Act'" (b). It enacted, that no person in holy act. orders, or pretending to holy orders, who has not declared his assent to every thing contained in the Book of Common Prayer, subscribed the declaration of conformity, and taken the oath reprobating the bearing of arms against the king, or attempting a change in church or state, nor any person who takes upon him to preach or teach in any conventicle, shall, unless only in passing on the road, come within five miles of any city, town corporate, or borough that sends burgesses to parliament, And by a Officiating under pain of forfeiting the sum of 40l. statute passed in the 22d year of the same reign, in convenpreachers and teachers are prohibited from officiating in conventicles, under heavy penalties for each offence (c).

The subject of education did not escape the atten-Schoolmastion of those who presided in church and state.

A year's imprisonment is inflicted by a statute of church, nor Elizabeth(d), on every practising schoolmaster not al-license. lowed by the bishop, or not repairing to church; and he is disabled to teach. By the 13th and 14th Car. II., schoolmasters neglecting to obtain a license (e), and to

ters not repairing to

⁽a) 18 & 14 Car, II., c. 4; explained by 15 Car. II., c. 6.

⁽b) 17 Car. II., c. 2, repeal-

ed by 52 Geo. III., c. 155.

⁽c) 22 Car. II., c. 1.

⁽d) 23 Eliz. c. 1, s. 7. (e) Enforcing 1 Jac. I., c.

^{4,} s. 9.

subscribe a declaration of conformity, are disabled to teach, and subjected to imprisonment and fine (a). And by a statute of the same reign, already quoted. no person restrained by that act, nor any other person, who does not frequent the established worship, and behave reverently there, shall teach any public or private school, or take any boarders, under pain of forfeiting the like sum; and offenders are to be imprisoned for six months, for refusing the oath and declaration in that statute contained (b).

Revolution.

As far down as the epoch of the Revolution, these its effect on ponalties, it will be seen, had been slowly but invaenactments. riably increasing. The light and liberty diffused by that memorable event, immediately produced a corresponding change in the policy of the nation (c). Nor can it be doubted the services of Protestant Dissenters on that occasion, contributed greatly to the subsequent melioration of their condition. Happier had been the result, if the crisis so magnanimously secured, had been employed with consistent dignity and grace to remove the last vestige of these opprobrious distinctions.

> Since that period, however, much has been done. Many of the most oppressive enactments have been repealed, and the operation of those that remain suspended, in most instances, by conditions intro-

(a) 13 & 14 Car. II., c. 4. (b) 17 Car. II., c. 2.

and required them to be put into the hands of conformists; and the latter statute, repealing the Occasional Con-formity Act of Queen Ann, which prevented any person under government from entering a meeting-house, prohibits resorting to conventicles with the ensigns of office.

⁽b) 17 Car. II., c. 2.
(c) That policy, however, has not been quite uniformly pursued. The 9 and 10 Wm. III., c.32, imposed the severest penalties on Anti-trinitarians. The 12 Ann, st. 2, c. 7, repealed by 5 Geo. I., c. 4, s. l, prohibited dissenters from educating their own children,

duced into the Acts of Toleration: or averted by the periodical interposition of legislative clemency towards offenders.

With respect to the class of penal enactments With regard comprised in a division of the summary, entitled to Protestant Dis-"Of the religious restrictions of Protestant Dissen-senters in ters (a)," and affecting that body generally, it may be general. observed, as to the penalties therein specified against Recusancy, that they are virtually repealed by the Recusancy. Toleration Act (b), explained and amended by more recent statutes, to all persons taking the oaths and making the declaration therein prescribed; as to such penalties as relate to Religious worship, except those Religious inflicted by the 5 and 6 Edw. VI., c. 1, which have werehip. not been noticed by the remedial acts, they also, by a recent statute (c), (which absolutely repeals the statute of 22 Car. II., c. 1, already quoted), are virtually repealed to all persons attending at a place of worship duly certified. As to the crime of Heresy, although by Heresy. a statute passed in the reign of Wm.III., for more effectually suppressing blasphemy and profaneness (d), any person educated in, or having professed the Christian religion within this realm, who, by printing, teaching, or advised speaking, denies the Trinity, or asserts a plurality of gods, is, on conviction, for the first offence, disabled to hold ecclesiastical, civil, or military offices, and the same, if in possession, are declared void; and for the second offence, he is disabled to sue in courts of law or equity, be guardian. executor, or administrator, take any legacy or deed of gift, or bear any office for ever in this realm, and

(a) Vide infra. (c) 52 Geo. III., c. 155, s. 1. (b) 1 W. & M., ss. 1, c. 18. (d) 9 & 10 Wm., c. 32.

a proviso, discharging the penalties and disabilities of the first offence, on recantation: yet, since the passing of a recent act(a), which in part repeals this statute, and extends toleration to the Unitarian creed, the offence of Heresy, it is apprehended, cannot be charged on the religious principles of any class of Protestant Dissenters. At present there remain unrepealed and unmodified in this class of penal enactunmodified, ments, the penalties on "attending another service than that of the Book of Common Prayer:" those on "reviling the established religion;" and, lastly, those on "wantonly depreciating the Prayer Book."

Penal enactments remaining

Corporation and Test Acts unchanged. Their incidental effect.

The Corporation and Test Acts have undergone no material change since the Revolution; but by: liberal operation of the Toleration Act, they have been incidentally bent to the purposes of indulgence. and now furnish an exemption from certain burdensome offices (b).

Indemnity acts.

The effect of our annual Indemnity Acts, has been to convert the sacramental test into a species of political pertcullis, new seldom or never employed against Protestant Dissenters: to be regretted chiefly on account of the odious distinction it insinuates; and only to be feared, as it perpetuates the nossibility of their exclusion (c).

Oaths.

Before we notice the legislative provisions in favour of the Quakers and Moravians, it will be our ob-

(a) 53 Geo. III., c. 160, the 3d section repeals two Scottish statutes against impugners of the Trinity, which inflicted death for that offence. the 57 Gee. III., c. 70, repeals the excepting clause of the Trish

stat. 6 Geo. I., c. 5, and extends to Ireland the provisions of 19 Geo. III., c. A4, and 53 Geo. III., c. 160.

(b) Vide infra, Summary. (c) Vide intre, Summary. ject, to consider briefly the statutes relating to oaths, as to the effect of which some doubts have been entertained.

Of these statutes there are eight principal ones(a); Difficulties the sections of which may be classed under two heads; as to the construcnamely, 1st. Those which, directing the oaths to be tion of taken as a qualification for office or employment, make statutes relating to the office or admission to employment void on neg-oaths. lecting or refusing to take them, and inflict a penalty on the party subsequently executing the office or employment. 2dly. Those which invest certain persons with power to tender the oaths, and inflict penalties on those who, on tender, refuse them. As to the first head, the 1 Wm. and Mary, s. 1, c. 8, after repealing the ancient oaths of allegiance and supremacy, and substituting others; and repealing also the 1 Eliz., c. 1; .3 Jac. I., c. 4, and every other statute, for so much as concerns those oaths: enacts. that any person (other than such concerning whom other provision is made in this act), thereafter admitted into any office, employment, or capacity, which would have imposed the abrogated oaths, or either of them, should take the oaths thereby appointed, in such manner, at such times, before such persons, and in such courts and places, as they ought theretofore have taken the abrogated oaths, or either of them, under the same penalties, forfeitures,

⁽a) 1 Eliz., c. 1; 5 Eliz., c. 1; 3 Jac. 1., c. 4; 7 Jac. 1., c. 6; 1 W. & M., s. 1, c. 8; 7 & 8 Wm. III., c. 27, as to oaths of allegiance and su-

premacy; 13 & 14 Wm, III., c. 6, as to oath of abjuration; 1 Geo. I., st. 2, c. 13, as to oaths of allegiance, supremacy, and abjuration,

disabilities, and incapacities, as would have been incurred by neglect to take the abrogated oaths, or either of them. The effect of this statute is. 1st. that although the 1 Eliz., c. 1, and 5 Eliz., c. 1, originally related to the oath of supremacy only: and the 3 Jac. I., c. 4, and 7 Jac. I., c. 6, to the oath of allegiance or obedience only; yet each of them now relates to the oaths of allegiance and supremacy in 1 Wm. and Mary, s. 1, c. 8, which substitutes the new oaths instead of those abrogated, or either of them. 2dly. That notwithstanding the words in the second section of 1 Wm. and Mary, s. 1, c. 8, repeal the 1 Eliz., c. 1, and 3 Jac. I., c. 4, and any other statute for so much only as concerns the said oaths, and the said oaths themselves.; yet that the 1 Eliz., c. 1, 5 Eliz., c. 1, and 7 Jac. I. c. 6, as far as they relate to the taking of the oaths as a qualification for office or employment, and to the rendering them void, on neglect or refusal of the oaths, are still in force.

The 25 Car. II., c. 2, also, which inflicts penalties for exercising an office after neglecting or refusing the oaths of allegiance and supremacy, and the declaration contained in that act, remains in force. A similar clause with respect to the oath of abjuration has since been introduced by 13 and 14 Wm. III., c. 6, and by 1 Geo. I., s. 2, c. 13, to the oaths of allegiance, supremacy, and abjuration; and the 7 and 8 Wm. III., c. 24, inflicts the penalty of premunire on barristers, attornies, &c., exercising their professions before they have taken the oaths in 1 Wm. and Mary, s. 1, c. 8, and subscribed the declaration in 25 Car. II., c. 2; all of which remain in force.

With respect to the second head; the 5th section of 1 Wm. and Mary, s. 1, c. 8, above mentioned, enacts that all persons (other than such concerning whom other provision is made in the act), shall take the ceths in the manner prescribed by the former statutes. The 7th section, being the only one in the statute which makes any other provision on the subject, enacts that if any such other person or persons (other than the nersons specially mentioned in section 5.) shall refuse to take the said oaths, or either of them, when as required by forms tendered, such person shall be committed, and a penalty paid for refusal. Hieron it follows, that all former statutes, as far as they relate to the taking of the oaths as a qualification for office or employment, and to the menner, time, place, and persons tendering, still remain in force; but that those parts of the statutes prior to the 1 Wm. and Mary, s. 1, c. 8, which inflict penalties for refusal on tender, are repealed. Therefore, the clauses 5 Eliz., c. 1, which make a refusal of the oath of supremacy on tender amount to premunire. and a second refusal to high treason, are repealed. For the same reason, the 3 Jac. I., c. 4, s. 13, and 7 Jac. I., c. 6, s. 26, which make a refusal of the oath of allegiance or obedience, on tender, amount to premunire, are also repealed, so far as they relate to the penalty of premunire.

The provisions made by the Indemnity and Toleration acts, for ex post facto qualification, have diminished, however, the importance of this subject (a).

Although, since the Revolution, the treatment of Quakers Quakers, with regard to their religious immunities, vians.

(a) Vide infra, Summary.

Remedial provisions in their favour.

has been something less liberal than that of other Protestant Dissenters; yet the policy of government has deviated more in other respects, to accommodate them, as well as the Moravians (a).

The recent abolition (b) of the statute of 13 and 14 Car. II., c. 1, already quoted; the reception of their affirmation in all civil cases, and in some of a criminal nature; the provisions respecting tithes, and military service; the freedom of the marriage rite among Quakers; with many local exemptions, respectively treated in the Summary, exhibit a favourable disposition in the legislature towards them. Howunpro- But the Quakers are still excluded from office under government, except in the colonies; exposed to fre-

tected.

quent imposition and injustice in criminal cases. where the remedy requires an oath; and have no proper share in the palladium of British liberty-the trial by jury.

Dissenting ministers how affectration acts.

The ministers of religion among the Dissenters have been placed by the Toleration Acts in circumed by Tole- stances better suited to their sacred functions (c).

Certain articles specified in the 1 Wm, and Mary. s. 1, c. 18, and by that act made a condition of their exemption from civil service and office, being found oppressive, they were subsequently exchanged for a declaration of Protestant belief, and the exemption was extended to serving in the militia.

A later act (d) having restricted the exemption from service in the militia, to teachers of separate congre-

⁽s) Vide infra, Summary.

⁽c) Vide infra, Summary. (d) 42 Geo. III., c. 90.

⁽b) 52 Geo. III., c. 155.

gutions qualified within the county, which, by an act passed in the year following (a), was explained to extend to qualifying in any county; and a still later act making a previous registry of the place of preaching electrial (b); a recent statute (c) carrying the exemption still farther, comprises all persons employed solely in clerical duties; to which, however, the profession of a schoolmaster may be added, and includes the local militia in the same provision.

The same statute has rendered actually qualifying, in all cases resiential under the Toleration Act, unnecessary now as a ground of exemption from the penalties of the statutes relating to religious worship, except when legally required in writing; and it limits the distance to which persons required to qualify are compellable to travel for that purpose. It also repeals the act of 22 Car. II., already quoted.

Protestant dissenting schoolmasters have met with Schoolmasless indulgance from the legislature. The only sta-tars, how exposed to tute (d) which telieves them from the ancient penal-ancient ties, makes their exemption depend on qualifying in penalties. the manner therein prescribed; while it expressly excludes them from all public appointments, except among Dissenters (e).

The 52 Geo. III., c. 155, s. 1, having repealed Places of the Conventicle act, enlarges the prohibited number of persons convening for religious worship, without certificate, to twenty; but Quaker assemblies not

⁽a) 43 Geo. III., c. 10. (b) 52 Geo. III., c. 38, s.

⁽c) 52 Geo. III., c. 155. (d) 19 Geo. III., c. 44, s. 2.

being contemplated by the pravisions of this statute, are still restricted to the number of five persons.

Protected by the legislature.

All religious assemblies of Protestant Dissenters, duly certified, in which the service is performed with open doors, being now authorised by law, a perfect impunity is afforded to the practice of frequenting them; they are likewise placed under similar protection, and, for some purposes, raised to a level, with those of the established church (a).

Rights of Protestant Dissenters recognized.

It must be observed, in conclusion, that the rights of Protestant Dissenters, neglected formerly by the courts of equity, and not very favourably noticed in courts of law, are for the most part distinctly recognized, and impartially administered by every modern tribunal(b).

The laws of Scotland, Ireland, and the Colonies. will not be comprised in the Summary, except by occasional reference; but it may be stated generally. that the Toleration Act of Ireland (c) places Protestant Dissenters in that country almost precisely in the situation of those in England after the 10 Anne. c. 2. excepting that no subscription to articles is required. No law, it appears, has yet existed in Ireland, to exclude Protestant Dissenters from corporations. Irish Test act, 2 Anne, c. 6, (Ire.) was repealed, as to them, by 19 and 20 Geo. III., c. 6. (Ire.).

⁽a) Vide infra Summary.

⁽c) 6 Geo. I., c. 5. (Ire.), extended to Unitarians by 57 (b) 3 Merivale, 396. Geo. III., c. 70.

SUMMARY

01

The Laws

AFFECTING PROTESTANT DISSENTERS.

Introduction.

CHRISTIANITY, identified with the tenets and Christianity service of the Church of England, is declared to be law of the a part of the law of the land; and offences against land.

God to be equally cognizable with those committed against the King (a).

On this assumption, such offences are punishable at common law, by statute, or by ecclesiastical censure.

The gravamen, however, in every instance, is asserted to be, the injury done to society by its commission (b).

Offences of this nature are either positive or relative.

The first class comprises atheism, apostacy, blasphemy, religious imposture, interrupting or abusing

⁽a) Rex v. Taylor, 3 Keb. 27 & 28 Car. II., B.R. 607, 621. Rex v. Woolston, 2 Str. 834. Fitzgibb. 64. St. (b) 4 Bl. Com. p. 42.

the ordinances of the established church, and all offences against public morals and decency.

With this class of offences, the present subject has no essential connection.

Nonconformity a negative offence.

Nonconformity, in its various forms, constitutes the second or negative class of these offences (a).

It may be subdivided into two species; of which, the former consists in absenting one's-self, through total irreligion, from the established worship, or persuading others so to do: the latter, in absenting one's-self from that mode of worship, on account of religious scruples, or persuading others, with a similar motive, to a similar practice; and in this species of offence, both Papists and Protestant Dissenters are equally implicated.

This Summary will only comprise the laws peculiarly relating to Protestant Dissenters.

Before we enter on these laws, it will be proper to consider, generally, in what respects the sights and duties of this numerous body of citteens accord with those of their conforming fellow subjects.

Of the Rights and Duties of Protestant Dissenters in general.

The ordinary rights and duties of Dissenters not different from those of others.

THE rights and duties of Protestant Dissenters are identical with those of their conforming fellow-subjects, except where expressly curtailed by the legislature: and with this exception only, they have an equal claim to the protection and benefit of those institutions which are supported at the common expense.

(a) 4 Bl. Com. D. p. 51, sed Quere Lord Manafield, in Harrison v. Evans, infra.

For example;—they are competent to attain and Peerage. occupy the highest rank of subjects in the kingdom.

They are not excluded from the representation of Senate. the country; the tests imposed on those who fill that station being not inconsistent with their religious principles (a).

They have a limited share in the privileges of our Sacraments ecclesiastical system: thus, they may demand admission to the sacrament of baptism; and if baptized by any person in the name of the Holy Trinity, to the sacrament of the Lord's supper; and the canonical rites of burial (b); and even without baptism, to the solemnization of the matrimonial service.

Their charitable bequests, for the benefit of their Charities. own communities, being no longer considered a dedication to superstitious or illegal uses, are executed in the courts of equity as nearly as circumstances will admit, according to the probable intentions of the testator; and their trusts for the promotion of public worship, and the inculcation of doctrine not contrary to law, are equally under the protection of the courts of equity (c).

Their registers of births and burials, as likewise Registers. certified extracts from them, are admissible evidence in the rank of private entries (d).

They are exempted from payment of tolls in going Tolls.

(a) 1 W. & M., c. 1, s. 6, 7; 1 Geo. I., st. 2, c. 13, s. 1; 8 Geo. I., c. 6, s. 1.

(b) Kemp v. Wickes, Arches' Court, 1809. Can. 68. Reasonable evidence of baptism is all that can be demanded.

(c) Attorney General v.

Cock, 2 Ves. 273. Walter w Childs, Amb. 524; sed vide, as to anti-trinitarian worship. Attorney General v. Pearson and others, 3 Merivale, 393, and cases there cited.

(d) Goodright ex. dem. Stevens v. Moss, Cowp. 594.

to their usual place of worship, telerated by law, on Sundays, or on any day on which divine service is by authority ordered to be celebrated (a).

Incidental

In some instances, which will be more particularly exemptions. noticed in a subsequent chapter, they have an incidental advantage over the conformists, in being exempted from certain offices, burdensome although honorary, to which the sacramental test is annexed (b): and being permitted to serve certain other offices to which that test is not annexed, by deputy (c). But it must be observed, that this advan-Dissenters. tage. as well as the benefit of various remedial enactments and decisions of the courts hereinafter mentioned, can be enjoyed by those persons only, who are bond fide Dissenters (d).

Boná fide

Tithes and other parochial dues.

On the other hand, they are not exempted from tithes or any other parochial duties, or any other duties to the church or minister: an express provision to this effect being introduced into the Act of Toleration (e).

But although liable to pay all ecclesiastical dues imposed by law, or supported by admissible custom (f), no custom will sustain a demand of fees in respect of a service not performed; and custom alone justifies a demand of fees for baptizing, marry-

(a) 3 Geo. IV., c. 126, s.

The peculiar exemptions and privileges of Quakers and Moravians are treated separately, vide infra, Summary,

(e) 1 W. & M., st. 1, c. 18, s. 6.

(f) Willes, 629. The custom is triable at law, Salk. 86.

⁽b) Harrison v. Evans, Dom. Proc. 1767. Journals, 475. 3 Bro. P. C. 465. Wilmot. 130.

⁽c) 1 W. & M., ss. 1, c. 18, s. 7.

⁽d) Harrison v. Evans, supra.

ing, or burying, none being imposed either by the canon, or common law (a).

In connection with this subject may here be men- Effect of tioned, that the canon laws have, intrinsically, no laws. force or authority in this kingdom: their obligatory power, in some instances, being derived solely from their recognition and adoption by our own codes; hence the canons allowed by James I., not having been confirmed by parliament, do not, in certain cases, and never ex proprio vigore, bind the laity (b).

It is scarcely necessary to add, that the means of Common enforcing rights, and redressing wrongs, are common modes of procedure. to all liege subjects, without distinction of sect or party: it were superfluous, therefore, to follow the subject into the respective courts, in which justice is impartially administered to all suitors.

Of Penal Enactments in general.

THERE being no usage or custom independent of Protestant positive law, to make Protestant dissent a crime (c), it dissent an offence by follows that its punishment results from express en- statute law actments only, and is entirely governed by them, only. both as to its manner and degree.

The rule controlling all penal enactments, may Rule as to be mentioned of this particular class of them, namely, penal enthey admit neither of forced construction, nor analogical application.

(a) Co. Litt. 113; Salk. Hardr. 351. 332 ; Lutw. 1030, 1059 ; Hob. 175; Lindw. 678; Raym. 1558; Willes, 538, 622. Cases, B. R. 171. S. C. Holt, 317. 6 Mod. 238. 1 Mod. 167.

(b) Kemp v. Wickes, Arch. Court, 1800.

(c) Harrison v. Evans, supra, per Ld. Mansfield.

Of the Effect of the Toleration Acts.

Remedial statutes.

THE penal enactments now actually in force, are comparatively few, the major part having been absolutely, or virtually repealed, by a succession of remedial statutes: and those which survive, are so far modified by the lenient interposition of the legislature, that, in their present mode of administration, they deduct, in no very considerable degree, from practical liberty. In their mildest form, however, they are oppressive in this respect; that they suspend some of the absolute rights of citizenship, on conditions, and convert common privileges into subjects of especial grace and favour.

Among the remedial statutes, the Toleration Act (a) takes precedence, as well in the expansive liberality of its enactments, as in chronological order; and the statutes of 52 Geo. III., c. 155, and 53 Geo. III., c. 160, close the series of material concessions.

We shall have frequent occasion to quote them as repealing, mitigating, or suspending the rigour of the penal statutes. In this place, more is deemed unnecessary, than to state their general effect.

Of the penal Enactments, considered in relation to the Parties they peculiarly affect.

Division of the Summary. In order to obtain a distinct view of the subsisting penal statutes, and the manner and degree, where any, in which they are affected by the Toleration Acts, it will be convenient to consider them in the following order:

(a) 1 W. & M., s. 1, c. 18; act by 19 Geo. III., c. 44. and declared to be a public

I.-Of the Laws affecting Protestant Dissenters generally. II.—Of those peculiarly affecting their Clergy. III.-Of such as peculiarly affect their Schoolmasters. IV.-Of those relating to their Places of Worship.

PART I.

OF THE LAWS AFFECTING PROTESTANT DIS-SENTERS GENERALLY.

CHAP. I.

OF THEIR CIVIL DISABILITIES AND EXEMPTIONS.

SEC. I .- Of the Sacramental Test.

1.—As a qualification for office under the Corporation Act (a).

In considering the several sections of this chapter, How far it is necessary to observe that they are only incident- altered ally affected by the Toleration acts.

No person may be placed, elected, or chosen, Sacrament in, or to the office of mayor, alderman, recorder, and oaths to be taken. bailiff, town clerk, common council man, or in or to any other office relating to the government of cities. corporations, boroughs, and cinque ports, and their members, and other port towns in England, Wales, or the town of Berwick on Tweed, who has not

(a) 13 Car. II., st. 2, c. 1, Geo. II., st. 2, c. 13. 5 Geo. amended as to oaths, &c. by 1 I., c. 6.

within one year next before such election or choice. taken the sacrament of the Lord's supper, according to the rites of the church of England, and who does not on his admission, whether the same be tendered or not(a), take the oaths of allegiance and supremacy, and the usual oaths of office, before the person or persons legally authorised to administer the same (b). and in default thereof the election is void.

As to removal.

But no person so placed, elected, or chosen as aforesaid, can be removed by the corporation, or otherwise prosecuted, by reason of his omitting to take the sacrament, nor will any incapacity, disability, forfeiture, or penalty be incurred thereby, unless such person is removed or prosecuted within six months after obtaining actual possession of his office (c), and such prosecution is carried on without wilful delay (d).

Effect of the 5 Geo. I., c. 6, on the

It appears, that before the last mentioned enactment, the objection of not having received the sa-Corporation crament within a year, might have been taken to the candidate, at the time of his election; when actually elected, at the time of his admission; and after his admission, at any future time, just as for a defect in any other precedent qualification (e). Since that en-

> (a) R. v. Mayor, &c. Oxon, Salk. 428. 5 Mod. 316. Comb. 419. Holt. 438. S. C. C. P. R. v. Thacker, T. Jones, 121. Trem. 517. 2 Show. 66; vide Denning v. Norris, 2 Lev. 242. 2 Show. 67. S. C. Semb. cont. (b) The person authorised to administer the oaths is usually designated by the charter:

in default of which, two jus-

tices of the corporation, and,

in default of them, two justices of the county may administer, s. 12, or a dedimus may be procured, 1 Str. 539.

(c) 2 Lord Raymond, 1354. 1 Str. 585. S. C. C. P. Cowp. 536, 539. 2 Burr. 1013.

(d) 5 Geo. I.,s. 3, a rule nisi. is a sufficient commencement of prosecution under this statute, 3 T. R. 514, n. (b) (e) 1 Kyd. 857-2.

actment, however, the effect of the objection must be considered with reference to three several periods of time:-1. When it is made at the time of election. or at any time before the person elected has obtained possession of the office: - 2. When it is made after possession, and before six months have elapsed since the election: -3. When it is made after possession. and after six months have elapsed since the election.

In the first case, the effect is the same as before the enactment in question; the election of a person so disqualified being still considered, before he is actually admitted, as absolutely void. In the second, the objection can be carried into effect only by actual amoval, or a prosecution seriously commenced within the time limited for that purpose; the statute, after admission, permitting the election to be avoided within the six months, only by one of these modes. In the third case, the objection has no effect at all, as coming too late; the statute operating as a protection to the possession, and a bar to the remedy (a).

It seems that, in all cases, proof of having received Onus prothe sacrament within the time limited, it being the bandi on affirmative position and evidence of qualification, elected. devolves on the person elected (b): but, where his title is disputed after the six months have elapsed, it is not incumbent on him to prove that no prosecution was commenced within that period, he having in that period acquired a presumptive title (c).

These statutes extend to a corporation created sub-

⁽a) 5 Geo. I., c. 6. Lord Raymond, 1354; 2 Burr. 1013; 1.Bl. 229; 2 Str. 1145; 1 Kyd. 357-3.

⁽b) 1 Kyd. 361-4; 2 Lord Raymond, 1354; 1 Str. 585; 10 Mod. 65.

⁽c) 2 Str. 1145.

Construction of these statutes. sequently to their enactment (a). But freemen, as such, are not included in the number of those who hold office (b). The courts are bound to grant informations against offenders, on the application of any individual, even of one who has concurred in the election, provided he was then ignorant of the want of qualification (c).

Qualifying before the latter of two offices, where eligibility to that office depends on the previous execution of another, is deemed sufficient (d). A neglect to qualify within a reasonable time, amounts to a waiver of the election (e). But the official acts of an unqualified person, it is presumed, are valid as to strangers, though the office, as to himself, is void (f). And it seems that in such case, he may maintain an action against a stranger for the profits of the office (g).

No penalty beyond removal. No penalty is, in fact, incurred by neglecting to qualify under these statutes, beyond removal from office.

Mayor, &c. attending chapels. But, if any mayor, bailiff, or other magistrate in England, Wales, Berwick on Tweed, or the Isles of Jersey or Guernsey, is knowingly or wilfully present at any public meeting for religious worship, other than of the established church, in the gown or other peculiar

(a) R.v. Borough of Aldborough, 10 Mod. 100.

(b) 2 Str. 828, Fitg. 47, S. C.; hence Quakers may be freemen.

(c) R. v. Smith, 3 T. R. 573; votes given after notice of disqualification are thrown away; vide, cases on this subject, 10 East, 211; 14 East,

549: 1 M. & S. 76.

(d) Martin v. Jenkin, 2 Str. 1145.

(e) R. v. Jordan, 9 East, 263.

(f) 1 Hawk. P. C. c. 8, s. 3. Hippenley v. Tuck, T. Jones, 81. Semb. cont. sed vide, S. C. 2 Lev. 184.

(g) R. Lut. 910.

habit, or attended with the ensigns of his office, on being duly convicted thereof, he is disabled to hold his office, and incapable of bearing any public office or employment within those parts of the realm (a).

2.—As a qualification for office under the Crown (b).

. All persons, excepting the sworn servants of Sacrament the king and queen, admitted, entered, or taken into and oaths any office, civil or military, or receiving any pay, salary, fee, or wages, by reason of any patent or grant from the king, or having command or place of trust from or under him, or by his authority, or by authority derived from him, in England, Wales, Berwick on Tweed, his Majesty's navy, or the Islands of Jersey or Guernsey, must take the oaths of allegiance, supremacy and abjuration, and (if residing, or being, at the time of their admission, in the city of London, or Westminster, or within thirty miles of the same), subscribe the declaration against transubstantiation, at the time and place, and in the manner specified in a subsequent section of oaths and declarations (c): and also receive the sacrament of the Lord's supper according to the usage of the church of England, within six months after their admission, entry, or accession, as aforesaid, in some public church, on a Lord's-day. immediately after divine service and sermon (d): of

⁽a) 5 Geo. I., c. 4. (b) 25 Car. II., c. 2; amended by 2 Geo. II., c. 31; 9 Geo. II., c. 26; 16 Geo. II., c. 30; and as to oaths, &c. by 1 Geo. I., st. 2, c. 13; 6 Geo. 111., c. 53.

⁽c) Vide infra.

⁽d) A clergyman cannot refuse the sacrament to any person, without a decree from the chancellor of the diocese, under pain of suspension and excommunication. Vide Rubric. et st. 1 Ed. VI., c. l.

which a certificate under the hands of the minister and churchwardens, must first be delivered to the court in which the said oaths and declarations are taken and made, proved by the oath of two credible witnesses, and there enrolled.

What penalties on neglect.

And all persons neglecting or refusing to take the said oaths and sacrament, and make the said declaration, are ipso facto, and altogether disabled to hold the office or employment, or any profit appertaining thereto, and the same is adjudged void.

And subsequent execution of the office.

And such persons executing an office or employment after the time allotted for qualifying has expired, incur, on conviction, in any of the King's courts at Westminster(a), or at the assizes, the disabilities and penalties specified in the subsequent section of oaths and declarations.

Restoration to office.

But they are permitted, on qualifying according to these statutes, to hold the same office or employment. or any other, under a new grant; unless, in the first case, it be granted to, and actually enjoyed by another person.

Persons and offices these statutes.

These enactments are not to prejudice the peerage excepted by of any peer of this realm (b), either in time of parlia-

> (a) An indictment brought at the quarter sessions might be quashed; R. v. Bristow, Say. 138; and in an action or information, the utmost precision is required, as to dates, demand of penalty, allegation of prior conviction, execution of office, recital of oaths, &c.; and the defendant must, it seems, plead and prove his qualification, and conclude prout patet per recordum.

Lut. 162, 163, 161; Clift. Ent. 133, 134.

(b) But peers must take the oaths and subscribe the declarations aforesaid; and they, as well as members of parliament, on default thereof, beside other penalties, are prohibited to appear in the king's presence without license. 1 Geo. I., st. 2, c. 13,; and 30 Car. II., st. 2, s. 2.

ment or otherwise; nor do they extend to any pension or salary granted by the crown to any person, for valuable and sufficient consideration, for life or years, other than those relating to offices or places of trust under the crown, or to pensions of bounty or voluntary pensions; or to any estate inheritance granted to any person by the crown, not being an office; or to any office of inheritance, or fee belonging thereto, then granted and enjoyed, or thereafter to be enjoyed, provided a deputy, approved by the crown under the privy signet is appointed, who duly qualifies, as his principal should have done. Nor to the office of high constable (except as to oaths and declarations) (a), nor of petty constable, tithing-man, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office; nor to any office of forester, or keeper of a park, chase, warren, or game; bailiff of a manor or lands, or like private offices (b); nor to persons having only the before-mentioned or like Nor do they extend to make any forfeiture. disability, or incapacity, by or in non-commissioned officers in the navy, duly subscribing the declaration against transubstantiation; or by or in any person beyond the seas, duly qualifying within six months after his return to England.

Sec. II.—Of indemnities from Penalties under these enactments.

THE Corporation and Test acts virtually exclude

⁽a) 9 Geo. II., c. 26.
(b) It is doubtful whether a censor of the College of Physicians is included; R v.

Burrell, 5 Mod. 431; Carth. 478, S. C.; Holt, C. J., pro.; Rokeby, J., contra.

Protestant Dissenters from those offices of emolument and honour which require the sacramental test.

Series of Indemnity acts.

An annual act(a) however is now regularly passed, early in every session of parliament, the series beginning in the year 1745(b), for indemnifying and discharging those persons who qualify themselves previously to a certain time in every act specified, from all penalties, forfeitures, incapacities, and disabilities incurred by omitting to qualify before the passing of each respective Act of Indemnity; and for making all intermediate acts valid and binding, and such subsequent qualification as effectual, to all intents and purposes, as a prior qualification would have been.

How limited.

But this annual act is usually limited so as not to entitle or restore any person to an office, matter, or thing already actually avoided by the judgment of any court of record, or filled up by any other person; nor any person against whom final judgment has been obtained in any action for a penalty; nor any person whose obligation to qualify commences subsequently to the passing of the act. The act, however, is now construed prospectively to include those who may be in default at any time during the period for which it is made, and it is not limited to such as had actually incurred penalties or disabilities before it passed (c).

And it has been settled, that an office is not legally filled up, until the party elected is sworn in (d).

⁽a) 6 Geo. IV., c. 3. (b) 18 Geo. II., c. 11: acts of parliament partly or wholly for the same purpose had been occasionally passed before.

⁽c) In re Steavenson and others, 2 B. & C. 34.
(d) R. v. Parry, et R. v.

Phillips, 14 East, 549.

SEC. III .- Of exemptions from Service under these enactments.

Ir the Corporation and Test acts exclude Protestant Exemption Dissenters from offices of emolument and honour, from burdensome they are, nevertheless, so construed now, as incident-offices. ally to exempt them from some offices that are burthensome and unprofitable.

Since the passing of the Toleration act, non-con- Non-conformity may be legally pleaded as a ground of ineli-formity may gibility to civil offices requiring the sacramental pleaded. test. A contrary doctrine formerly prevailed (a), but the validity of the plea was finally established by the House of Lords, in an important case of appeal already quoted (b).

Protestant Dissenters appointed to any parochial Service of or ward office, who scruple to take on themselves parochial office by such offices, in regard to the oaths or other mat-deputy. ter or thing required by law to be taken or done, respecting such office, are permitted by the last mentioned act, to execute the same by a sufficient deputy, to be provided by them, who will comply with the laws on that behalf; such deputy being allowed and approved in the same manner as the officers themselves should, by law, have been allowed and approved (c).

Sec. IV.—Of qualifying for Degrees in the English. Universities.

No parliamentary statute requires the sacrament No sacra-

(a) R. v. Larwood, Salk. pra, p. 22. 57. (c) 1 W. & Mary, s. l, (b) Harrison v. Evans, su-c. 18, sec. 7.

mental test to be taken, in order to qualify for academical deenjoined by grees; but the statutes which each University, in the ary statute, exercise of a legal power, has thought fit to enact for its own government, sanctioned by royal letters, have rendered it impliedly essential (a).

Various tests effecting their vxclusion.

Under this head may be mentioned all those other tests which exclude Protestant Dissenters from degrees at these Universities:—namely, a subscription to the King's strictly spiritual authority; to the perfection of the Book of Common Prayer, and promise of its exclusive use; a declaration of unequivocal conformity, and an assent to the whole of the thirtynine Articles (b).

The statutes of the University of Oxford prohibit even the matriculation of a student who has not subscribed the articles (c).

Sec. V.—Of exclusion from Ecclesiastical Preferment.

Ecclesiastical preferment.

It is merely requisite in this section to add the statute enjoining episcopal ordination, together with canonical obedience to the tests enumerated in the preceding section, which effectually exclude Protestant Dissenters from office and emolument in the church (d).

(a) Excerp. e. Stat Cantab. Reg. Lit. Jac. I. The interpretation put by the Universities on their own statutes is conclusive. 6 T. R. 89.

(b) Ead. Statuta. p. 24. It is an offence against these statutes to publish any thing against the established church. 6 T. R. 89. (c) The children of dissen-

ters are not excluded from public schools, or other eleemosynary institutions.

(d) Canons passim. 13 Eliz., c. lz; 13 and 14 Car. II., c. 4.

SEC. VI.-Of the Marriage Rite.

The Marriage Act (a) has deprived Protestant Dissenters Dissenters, the Quakers alone excepted, of a right prohibited from marry-previously enjoyed by all, to solemnize matrimony in ing in contheir conventicles (b); converting, by this means, the venticles matrimonial engagement, esteemed for many purposes even now, and anciently altogether, a civil contract (c), into one of a religious nature, whose validity depends on the celebration of a service, involving in it assent to some of the peculiar doctrines of the Established church. But a protest against these doctrines, provided the parties are willing to comply with the ceremony, will not justify a clergyman in refusing to administer it (d).

The pressure of this enactment is felt most seriously by the Unitarian Dissenters.

Sec. VII.—Of the civil disabilities and exemptions of Quakers and Moravians.

The peculiar sentiments of these two sects, in re-Civil disabispect to several important subjects of municipal arbitics and exemptions rangement, have given rise to certain legislative of Quakers provisions, either in the nature of disabilities or exemptions. These disabilities and exemptions will be considered under the heads of—1, Oaths generally; 2, Oaths to Government; 3, Tithes; 4, Military Service; 5, Marriage; and, 6, Miscellaneous Provisions.

(a) 26 Geo. II., c. 33, s. 18, &c. The Levitical degrees of consanguinity and affinity have always been binding on Dissenters. 25 Hen. 8, c. 22: 28

Hen. 8, c. 7; 32 Hen. 8, c. 38; revived by 1 Eliz. c. 1.

⁽b) 3 Levinz, 376. (c) Moor. 170.

⁽d) 53 Geo. 3, c. 160.

1. Of Oaths generally.

Privations

THE scruple entertained by Quakers and Morain respect of vians, to take an oath, excludes them from serving on juries. It likewise disables a Quaker, except in the colonies (a), to hold office or place of profit, under government.

> On the other hand, the solemn affirmation of a Quaker or Moravian, is of the same validity as an oath taken in the usual form, in all cases which are not criminal: and a false affirmation is tantamount to the crime of perjury (b). Criminal cases must be understood to mean those which are substantially so (c); for if, though nominally criminal, as in the case of penal actions (d), they are, in reality, of a civil nature, an affirmation is admissible: so in cases substantially criminal, a civil form of procedure will not entitle the affirmation to be admitted (e).

How far affirmation admissible.

> Yet, where application to a court of judicature, in a criminal procedure, is made against a Quaker, or Moravian, the affirmation of either may be received in his own defence (f); and, by the special provision of various penal acts (g), evidence may be given on

(a) 13 Geo. II., c. 7. (b) 7 & 8 Wm. III., c. 34, as to Quakers : 22 Geo. II., c.

30, s. 1, as to Moravians. (c) 2 Str. 856. Cowp. 392. (d) Cowp. 382. 2 Str 1219. 1 Phill. Evid. p. 25,

and causes there cited. (e) 2 Str. 872. 2 Burr. 1117. 1 Str. 527. Willes, 291, et vide note (b) for cases collected.

(f) Andr. 201, n. 2 Burr. 1117. Cowp. 383, 392.

(g) Fraud in manufactures, 13 Geo. II., c. 8, and 22 Geo. II., c. 27. Obtaining money, pawning, gaming 30 Geo. II., c. 24. Coals, 7 Geo. III., c. 23, and 26 Geo. III., c. 108. Hats, 17 Geo. III., c. 56. Wood, 21 Geo. III., c. 3. and 25 Geo. III., c. 40. Newspapers, 38 Geo. III., c. 78. affirmation; but on a charge of treason or felony, preferred against either, the benefit of unsworn testimony is not extended to them, by any statutory provision(a).

2. Of Oaths to Government.

QUAKERS and Moravians are enjoined, in lieu Provision in of the oaths to government, to make a declaration of oaths of alfidelity (b), an affirmation of abjuration (c), and a legiance, profession of Christian belief (d), to which is added the common declaration against transubstantiation.

These, when lawfully required, must be taken, made, and entered, at the general quarter sessions of the peace for the county, city, or place of residence of the party qualifying; who is thereupon exempted from the penalties of the statutes enumerated in the 13th section of the Toleration Act, and entitled to the full benefit of that act, equally with other Protestant Dissenters (e).

3. Of Tithes.

It is provided, on behalf of Quakers (f) objecting Provisions to pay or compound for any tithes, rates, customary, tithes, &c. or other rights, dues, or payments belonging to the Established church, that when any such, by law and

The 15 Geo. III., c. 38, has been quoted as conferring on Quakers a right of affirmation whenever a penalty is to be levied; but the title and preamble shew the intention to be merely to invest a justice with the power of administering it in those special cases, in which the right had existed on the one hand without a commensurate power on the other.

(a) Cowp. 391.

(b) 8 Geo. I., st. 2, c. 6, s. 1.

(c) Ibid. s. 3. As to Moravians, 22 Geo. II., c. 30.

(d) 1 W. & M., ss. 1, c. 18, s. 13. (e) 1 W. & M., ss. 1, c.

18, s. 13.
(f) 7 & 8 Wm. III., c. 34, 1 Geo. I., c. 6, and 27 Geo. II., c. 20, amended and confirmed by 53 Geo. III., c. 127.

custom, payable for the stipend or maintenance of any minister or curate, officiating in any church or chapel, amounting to a sum not exceeding 501., are due, any justice of the peace of the county or place (other than the patron or person interested in the same), on complaint of any parson, vicar, curate, farmer, or proprietor of, or entitled to receive or collect such tithes, rates, dues, or payments, respectively, may, and is required to summon, by writing, under his hand, and seal, with reasonable warning any Quaker refusing to pay or compound for the same, to appear before any two or more justices of the peace of the county or place aforesaid, and, on his appearance, or in default of his appearance, the warning or summons being proved on oath, they are empowered to examine on oath or affirmation, the truth of the complaint, to ascertain what is due, and, by order, under their hands and seals, to direct its payment: and on refusal to obey the order, it is lawful for one of the said last-mentioned justices, by warrant under his hand and seal, to levy the money by distress and sale of the goods (a) of the offender, his executors or administrators, rendering only the surplus, after deducting the necessary costs and charges of making the distress, not exceeding the sum of 10s.; and any

Order of justices to distress.

(a) No auction duty is payable on these sales; 19 Geo.

III., c. 56. The plaintiff's costs in the court of Exchequer, in suits for tithes, being very considerable, and the Ecclesiastical courts in such cases affording no adequate remedy, it was the obvious intention of the legislature, in providing a III., c. 112.

summary process, to accommodate both parties. Some cases have occurred, in which special acts have been passed, liberating persons confined for non-payment of tithes, and authorising the sum due to be paid out of their effects. 28 Geo. II., c. 18, and 37 Geo. III., c. 112.

person aggrieved by such judgment, may appeal to Appeal the next general quarter sessions, and the justices there present, or the major part of them, may reverse or affirm the said judgment, and in case of affirmation, give costs against the appellant, to be levied by distress and sale; and these proceedings cannot be removed or superseded by any writ of certiorari, or other writ whatsoever, unless the title to such tithes, dues, or payments comes in question; and in case of appeal, no warrant of distress may be granted, until after such appeal is determined (a). The time for bringing actions to recover penalties for not setting out tithes, and instituting suits in an equity, or ecclesiastical court, to recover the value of tithes, is limited to six years (b).

4. Of Military Service.

QUAKERS being prevented by their scruples from Provisions voluntary contributing, either personally or otherwise, in respect of military service, the following provisions have vice. been made in that behalf.

If a Quaker neglects or refuses to serve in the Regular militia (c), when embodied, or to provide a fit substinitia. Substitute tute, any two or more lieutenants may provide one for him; and, by warrant under their hands and seals, Distress levy upon him by distress and sale, such reasonable sum as may be expended in procuring a substitute, together with the expenses of making the distress and sale; and if no goods, or none sufficient can be

(a) A general act of the same import, but applying only to small tithes, offerings, oblations, obventions, and compositions, was passed in 7 & 8 Wm. III., c. 6; renewed in

the same reign; made perpetual by 3 & 4 Anne, c. 18, s. 1, and extended to the value of 10l. by 53 Geo.1II., c.127, s.4.

⁽b) 53 Geo. III., c. 127, s. 6. (c) 42 Geo. III., c. 90. s. 50.

found, and it satisfactorily appears to the said deputylieutenants, that the said Quaker is of sufficient ability to pay the sum of 10*l*., being the sum forfeited by other persons for similar instances of neglect and refusal, they may commit him to gaol for the term of three months, or until he pays the expense of procuring a substitute.

Appeal.

In case of supposed oppression in levying the distress, a complaint may be made by the party thinking himself aggrieved, to the next general meeting of the deputy-lieutenants, who are authorised finally to determine the same.

Volunteers.

Where a rate is made for providing volunteers (a), and a Quaker refuses to pay his proportion of it, the churchwardens and overseers may lodge a complaint thereof with a justice of the peace, who may order reasonable costs for levying the distress authorised by the Militia Act: in case there are only two Quakers so refusing, the costs of each are not to exceed 10s., which sum is reduced to 5s., where the number is more.

Who Quakers. No person is to be deemed a Quaker within the meaning of these enactments, unless he produces to the deputy-lieutenants, at a sub-division meeting, a certificate of that fact, under the hands of two respectable householders, being Quakers, dated within three months of the day of its production; and a similar certificate is required to be produced, by householders, being Quakers, to the constable or other officer whose duty it may be to furnish a list of the inhabitants liable to military service (b).

⁽a) 42 Geo. 3, c. 90, s. 51, this section is adopted by the Local Militia act, s. 53. (b) 42 Geo. 3, c. 90, ss. 51, 27: ss. 27, 33, are also adopted ed by 46 Geo. 3, c. 91.

And in case a Quaker is chosen constable, or other- Deputy wise appointed for the purposes of the Militia Act, constable. and neglects or refuses to serve: on his producing a similar certificate, it is lawful for two justices to appoint a deputy for him, who will be invested with the same powers, and liable to the same penalties, as he himself would have been; and on such appointment being made, he is discharged (a).

A similar provision to the last is made in the Act for the defence of the Realm (b); and likewise in the Local Militia Act (c); but in the latter case, the deputy must be above thirty years of age. And by the Act for de-20th section of the Act for the defence of the Realm, fence of the a Quaker or Moravian balloted under that act, is exempted from service on producing to the deputylieutenants, at a sub-division meeting, or to any two deputy-lieutenants or justices of the peace, a similar certificate, the householders being Moravians in the latter case, and in either case residing in the same county or place as the person certified, and the deputy-lieutenants or justices may fine the party in a sum not exceeding 71., nor less than 20s., for the year of the ballot, to be levied by distress; and in case no goods can be found, any deputylieutenant or justice has a discretion to imprison the party, for any time not exceeding fourteen days, unless such sum is sooner paid or satisfied; but this act does not extend to the city of London. A

⁽a) 42 Geo. 3, c. 90, s. 33. Similar provisions have been made in Scotland, by 42 Geo. 3, c. 91, et 52 Geo. 3, c. 68.

⁽b) 46 Geo, 3, c. 90, s. 21, (c) 52 Geo. 3, c. 38, s. 25,

Local militia. similar provision to the last, is made in the Local Militia Act (a); but the fines specified in s. 44, being 30l., 20l., or 10l., according to the ability of the party, may be mitigated, at the discretion of the deputy-lieutenants; who possess likewise the power of remitting the imprisonment, which is for one month.

London militia. The militia in London being raised by bounty, and not by ballot, the exceptions made in favour of Quakers by the General Militia Acts, which, by the 1 Geo. IV., c. 100, are made applicable in all practicable cases to the London militia, do not come into operation; by the 13th section of this act, they are liable to be distrained on for their proportion of the rates, to be levied for the payment of bounties.

Miners.

In the Act for raising a regiment of Miners the provisions made in favour of Quakers by the General Militia Acts, are expressly adopted (b).

5. Of the Marriage Rite.

Marriages.

QUAKERS, being expressly excepted from the operation of the Marriage acts (c), still retain the liberty of solemnizing matrimony in their conventicles; but the indulgence is limited to cases in which both the contracting parties are of this denomination.

(a) 52 Geo. 3, c. 38, s. 50. By the Mutiny Act, 1 Geo. 4, c. 19, s. 81, persons refusing to assist in conveying baggage, &c., or resisting the constable's warrant, incur a penalty not exceeding 5l., nor less than 40s., to be levied as therein mentioned, by distress.

(b) 42 Geo. 3, c. 72. The

Moravians in our American colonies are exempted from bearing arms, by 22 Geo. 2, c. 30. In the Act for Watching and Warding, 1 G. 4, c. 24, provision is made for the personal exemption of Quakers.

(c) 26 Geo. 2, c. 33, s. 18;

3 Geo. 4, c. 75: 4 Geo. 4, c. 76.

Their conjugal rights, it appears, are the same as in other cases: nor would the title of the husband. it is presumed, to administer the effects of his deceased wife, be now (a) disputed, as formerly (b),

6. Of Miscellaneous Provisions.

THE burial registers of Quakers are admissible Burial for the purposes of the act 57 Geo. III., c. 26. on register. granting life annuities in reduction of the national debt (c).

The rules or discipline of church government Discipline. among them, are recognised and allowed (d).

By various acts of parliament, they are locally Local exempted from offices opposed to their religious exemptions. scruples: such as that of assessor or collector of a stipend to a rector or vicar(e); of collector, treasurer, clerk, or receiver, for building, re-building, or repairing a church, chapel, or steeple (f); and of churchwarden or chapelwarden of new churches or chapels (q).

They are permitted to compound, in certain specified instances, for parochial and other rates (h): and their affirmation qualifies them to act as com-

(a) 31 Ed.3, c. 11; 21 Hen. 8, c. 5; Watt v. Watt, 3 Ves. jun., 246-7; Toller's Ex. 83,

(b) Salk. 438; Ibid, 120; 3 Lev. 376.

(c) 57 Geo. 3, c. 26. (d) Rex. v. Francis Hart,

2 Burns' Ecc. Law, 199. (e) 23 Geo. 2, c. 36; 19 Geo. 3, c. 57: 44 Geo. 3, c. 89; 47 Geo. 3, c. 132.

(f) 24 Geo. 2, c. 15; 26 Geo. 2, c. 38; 26 Geo. 2, c.

94; 14 Geo. 3, c. 12; 54 Geo. 3, c. 111; 55 Geo. 3, c. 44. (g) 43 Geo. 3, c. 117; 45 Geo. 3, c. 41; 45 Geo. 3, c.

14; 45 Geo. 3, c. 66; 48 Geo. 3, c. 97; 51 Geo. 3, c. 69; 57 Geo. 3, c. 34.

(h) 50 Geo. 3, c. 14; 52 Geo. 3, c. 75; 53 Geo. 3, c. 162; 54 Geo. 3, c. 43; 55 Geo. 3, c. 96; 56 Geo. 3, c. 5; 56 Geo. 3, c. 56; 58 Geo.

3, c. 22.

Petty courts. missioners in certain courts, for the recovery of small debts (a).

Charities.

Lastly, their charitable foundations and donations, are not included in the act for registering and securing charitable donations in general (b).

CHAP. II.

OF THE RELIGIOUS RESTRICTIONS OF PROTESTANT DISSENTERS.

SEC. I .- Of the effect of the Toleration and other remedial Acts on these Restrictions.

The operation of Toleration acts.

THE operation of the major part of the penal statutes treated in this division, is suspended, by conditions introduced into the Toleration and other remedial acts: the due observance of which, effects a virtual repeal of the penalties. These conditions are more numerous with respect to Quakers, who, being not included in a recent remedial statute (c). are governed by the terms of former statutes, and must, it is presumed, still make the declarations. and profession of belief, enumerated in a preceding chapter, in order to entitle themselves to the religious immunities conferred on Protestant Dissenters in general.

The conditions applicable to each head of offence will immediately precede the consideration of the penal enactments they qualify.

(a) Derby, 6 Geo. 3, c. 20; plicable to the Quakers, are 1 Bristol, &c., 56 Geo. 3, c. 76. W. & M., s. 1, c. 18, and 10 Anne. c. 2.

(b) 52 Geo. 3, c. 102.

(c) The Toleration acts ap-

SEC. II.—Of Heresy and its incidents.

1. Of Heresy.

Or this offence, the Ecclesiastical courts retain Heresy, by undisputed cognizance (a), how far, simply consi-whom cognizable. dered, if at all, it comes within the jurisdiction of the common-law, is doubtful (b).

It is certain, however, that although the object of the Toleration acts was only to repeal the penal laws therein mentioned, leaving the common-law as it stood, with respect to common-law offences against religion (c); yet, since these acts hold out protection to the principles of Protestant Dissent, and authorize its forms of worship, on certain conditions, they have conferred an exemption from the penalties of this offence, to the extent of those principles, and in favour of all who comply with those conditions (d).

According to some, this crime consists in holding an In what it opinion repugnant to the doctrines of revealed religion. of which, the church herself is the judge(e); but others affirm it to include a neglect or omission of the ceremonies and ordinances of the Established church (f).

(a) The statutes 2 Hen. 4, c.5; 2 Hen. 5, c. 7; 25 Hen. 8, c. 14; 31 Hen. 8, c. 14; 34 & 35 Hen. 8, c. 1; 35 Hen. 8, c. 5, are expressly repealed by 1 Ed. 6, c. 12, which repeals generally all former laws concerning religion.

(b) 3 Merivale, 379; 2 Burns' Ecc. Law, 269; Sed vide 1 Hale, 395; 3 Inst. 43; l Hawk. c. 2, s. 10. If, in maintenance of his errors, a man does ought that tends to a breach of the peace, he is

amenable to the common-law. 1 Hawk. c. 4.

(c) 3 Merivale, 405, per Lord Chancellor Eldon, et vide S. C. p. 408, as to the effect of 53 Geo. 3, c. 160, on Unitarianism.

(d) This extends to ecclesiastical censures, S. C. p. 385.

(e) Chillingworth, 199, Acc. Lind. 299; 1 Hawk. c. 2, s. 1; Mirr. 22; 1 Eliz. c. 1; 3 Inst. 40.

(f) Lind. 292-3.

In Heresy, the temporal courts have now only an incidental jurisdiction (a); it belongs, therefore, to each bishop, in his own diocese (b), and on neglect of his duty, or by his consent, to either archbishop in his province (c), with a right of appeal, in all cases, to a higher Ecclesiastical court (d).

To the convocation, with the royal sanction, appertains the power of defining this offence (e); the ultimate decision vests in the crown (f); but subject, of course, to parliamentary revision (g).

Punishment by writs de contumace de excommunicato capiendo.

Its punishment consists in ecclesiastical censures, injunction of penance, and excommunication (h): capiendo, at but the decrees of the church must be civilly enforced, by writs out of Chancery, called writs de excommunicato capiendo, and de contumace capiendo: the former writ issues in cases of definitive sentences, or interlocutory decrees, having the effect of definitive sentences, pronounced as spiritual censures for offences of ecclesiastical cognizance; the latter writ, in all other cases, in which, until a recent statute (i). the former writ was wont to be issued. The mode of issuing these two species of process, is the same; the results are somewhat different: the writ de contumace capiendo only arrests and detains the offender until he appears to citation, obeys, or submits to the authority of the Ecclesiastical court: the writ de excommunicate capiendo imprisons the offender for a

⁽a) 12 Co. 57; 3 Inst. 40; 27 H. 8, s. 14; 1 Hawk. c. 2, (b) 1 Hale, 392; 3 Inst. 39; Gibs. 353; 12 Co. 56.

⁽c) 23 Hen. 8, c. 9. (d) 1 Hawk. 4.

⁽e) 1 Hawk. c. 2, s. 3. (f) Whiston's case, Queen Anne, 1711. (g) 1 Eliz., c. 1.

⁽h) 2 Burns' Ecc. Law, 269, 27Ò.

⁽i) 53 Geo. 3, c. 127, s. 1, 2.

term not exceeding six months, or until he be absolved by the church (a). After recantation of Heresy, the offender cannot be punished even by the ecclesiastical law (b).

Notwithstanding the protection of the Toleration How far acts, the penalties of this offence, it may be inferred, Dissenters apply to Protestant Dissenters who neglect to comply with the terms on which their opinions and worship are tolerated.

2. Of reviling the Established Religion.

EXPRESSIONS abusive of the established church Abusing the and its ordinances, when forming no part of legiti- church, &c. mate discussion, are still, it would seem, subject to ecclesiastical cognizance (c); liable to indictment at common-law, as tending to a breach of the peace (d); and punishable by statute (e).

Reviling the Sacrament of the Altar exposes the offender to imprisonment and fine, at the discretion of the court (f); but the information must be laid on oath, by two persons, at least, before three justices of the peace. The indictment must be found at the quarter sessions, before three or more justices, and tried before the same number, they having first sent a writ to the bishop, or his deputy, to assist at the trial: and the offender may purge himself by an equal number of witnesses to those who depose against him (g).

- (a) 53 Geo.3, c. 127, s. 3.
- (b) Fuller's case, Gibs. 353. (c) Canon, 3.
- (d) 1 Hawk. c. 5, s. 6; Atwood's case, 2 Rol. Ab. 78; 1 Pl. 1 Cro. Jac. 421, S. C.
- Semb. cont.
- (s) 1 Ed. 6, c., s. 1, revived by l Eliz., c. 1, s. 14.
 (f) 2 Inst. 168; l Hale,
- 375. (g) 1 Ed. 6, c. , s. 1, supra.

 Of wantonly depreciating the Prayer Book, or persuading a Clergyman to use another Form of Prayer.

Depreciating the prayer-book, &c.

WRITING interludes, plays, songs, rhymes, or other open words; or declaring, or speaking the same wantonly, and not in argument, in derogation or contempt of the book of Common Prayer, or of any thing therein contained, or any part thereof; or procuring a conformist clergyman in any place, to sing or say any common or open prayer, or to minister any sacrament, otherwise than is enjoined in that book, subjects the offender, on conviction by a jury, confession of the party, or notorious evidence of the fact, to a forfeiture, for the first offence, of one hundred marks; and on default in payment for six weeks, to imprisonment for six months: for the second offence, to four hundred marks, and on default in payment, to imprisonment for twelve months: and for the third offence, to a forfeiture of all his goods and chattels, with imprisonment for life (a).

This offence is likewise cognizable by the ecclesiastical courts, and at common-law; but only one punishment can be inflicted for the same offence (b).

SEC. III .- Of Recusancy and its Incidents.

That the religious functions of Protestant Dissenters have been virtually authorised by the Toleration

⁽a) 1 Eliz., c. 2, s. 9 &c. passim. 1 Mod. 168, (b) Ibid, s. 16, 23; Canons,

acts on certain conditions, and placed, so far as relates to this section, on a level with those of the Established church, will not be denied (a); and it seems equally clear that exemption from the penalties of recusancy and its incidents was intended by the last of those acts, to be conferred on all who without any precedent qualifications frequent any religious service authorised by them, with the exception of Quakers, who must still qualify in the manner hereinbefore specified (b). One offence, however, in this section subsequently mentioned, being unnoticed by any of the remedial acts, still remains exposed to the rigour of the ancient penalty, which can only be evaded by a liberal extension of their spirit and design (c).

It must be added, that persons who still claim exemption from the penalties incurred under the statutes of Recusancy enumerated in the first section of W. & M., s. 1, c. 18, by qualifying as therein is mentioned, are now protected and discharged from those penalties by qualifying before two justices of the peace, at any time during a prosecution (d).

1. Of Recusancy.

RECUSANCY consists in not attending on Sundays Not attended holidays, the divine service established by law. ing divine service.

Its prohibition is sanctioned by the following enactments:—

⁽a) 1 W. & M., s. 1, c. 18, s. 1, 11; 52 Geo. 3, c. 155, s. 4; 53 Geo. 3, c. 160, as to Protestant Dissenters generally.

⁽b) 1 W. & M., s. 1, c. 18, s. 13; 10 Anne, c. 2, as to Quakers. Supra, p. 44.

⁽c) Vide, infra, p. 54. (d) 10 Ann. c. 2, s. 8.

Every person in the King's dominions (a), married women not excepted (b), having no lawful excuse to be absent, of which excuse, the reasonableness, it seems, must be determined in the first instance by the ordinary (c), or a justice of the peace (d), who does not differently endeavour to resort, on every Sunday and holyday appointed to be kept, to the parish church or chapel (e), or other place of worship, enioined or authorised by law, and there abide orderly and soberly (f) during all the time of divine service (a). is subject to ecclesiastical censure, and to a forfeiture on conviction before the justices of over and terminer, or assize, or the chief officers of corporations, of 12d. for each offence; which may be levied by the churchwarden of the parish where it is committed, by distress; and in default of goods, the offender may be committed to prison till the fine is paid; but any prosecution on this statute is limited to one month (h), or to the next general sessions (i) after the commission of the offence.

(a) 5 & 6 Ed. 6, c. 1, s. 2, revived by 1 Eliz., c. 2, s. 14. The latter statute gives juris-diction over this offence, to the ecclesiastical courts; but they seem to have also an original jurisdiction. Britton v. Standish, 6 Mod. 188; vide 3 Keb. 527, 535, 545, 563, 610; Godb. 148; 29 Eliz., c. 6, s. 5, and 3 Jac. 4, as to indictments and proclamations.

(b) 11 Co. 62. An information lies against the husband. Dub. Sav. 25, R. 2 Cro. 259; Cont. 11. Co. 60 b, 61 a. R. acc. Hob. 204.

(c) Gib .291, 964 : Rex. v. Dermer, 2 Leon. 5; 3 Keb. 762, 797. 1 Hawk. 13.

(d) 3 Jac. 1, c, 4, s. 27. (s) Sid. 230; 3 Keb. 797; 6 Mod. 188; 2 Ro. Rep. 438, 455; Holt, 141; l Salk. 166; 3 Salk. 88; 1 Bulstr. 159.

(f) Foster's case, 1 Ro. Rep. 93. 1 Keb. 491. 1 Saund. 13. 1 Sid. 301. 1 Lev. 196. 2 Keb. 124.

(g) Godb. 148.

(h) 3 Jac. 1, c. 4, s. 27, 28. (i) 1 Eliz. c. 2, s. 20.

Godb. 148.

And for every month's (a) absence, every person For a above the age of 16 years (b), including married month. women(c) incurs, on conviction in the King's Bench, at the assizes, or sessions of peace (d), beside ecclesiastical consure, an additional forfeiture of 201.; and on non-payment of the fine for three months, may be committed to prison until payment or conformity, or an action may be brought to recover the same to the use of the crown (e). And in case of absence for For twelve twelve months, on a certificate of the fact being months. transmitted to the King's Bench, the offender becomes liable, over and above these forfeitures, to be bound to good behaviour, with two sureties in the sum of 2001., at least, until he conforms according to the meaning of 1 Eliz., c. 2, s. 14(f); and every offender on conviction becomes liable to pay intothe court of Exchequer within Easter or Michaelmas term after, 201. for every month in the indictment; and without further proof, for every month afterwards, the sum of 201., until conformity or death (g); and on default of mayment, the crown may seize and enjoy (A)

(a) 23 Eliz. c. 1, s. 5. This is a lunar month, 1 Hawk. c. 10, s. 11. 2 Re. Abr. 521. C. P. 11.

ing 23 Eliz. c. 1, s. 10, 11.

⁽b) Moor, 606. (c) 11 Ca. 62. Sav. 25. 1 Ro. Rep. 233, 4. 3 Bulstr. 67, S. C. Cro. Jac. 529. (d) 29 Eliz. a. 6. 3 Jac. 1, c. 4. 11 Co. 58, 60. 1 Ro. Rep. 89—233. 3 Bulst. 67, S. C. 11 Co. 58, 60. 1 Ro. Rsp. 89. 3 Keh. 527, 535, 545, 563, 610. As to service of process, 12 Co. 131.

⁽e) 35 Eliz. c. 1, explain-

⁽f) By 1 Eliz. c, 2. an exception is made of those who do not obstinately refuse to come to otherwise, but attend in their own houses the established service, and are present four times in the year, at public worship in some church or chapel of ease.

⁽g) 29 Eliz. c. 6, a. 4. (h) In nomine pane, Cro. Eliz. 845. 1 Jon. 24. 4 Leon. 239, semb. contra, not after death, Lane. 91, 3.

all his goods (a), and two thirds of his lands, tenements, and hereditaments (b) until his death or submission, and satisfaction rendered for the arrears due up to either of these events (c): but life estates, and estates in right of a wife, are not chargeable beyond the life of the offender (d). Or in lieu of the 201. per month, the king may at once (e) take to his own use (f) two-thirds of the lands, tenements and hereditaments of the offender, provided the mansion-house of the offender be not therein included; no lease of the property be made to or for the use of any recusant; and security be given in all leases against the commission of waste.

All assurances by recusants to defeat these forfeitures, are void as against the crown (g).

No indictment, proclamation, outlawry, or other proceeding thereon, shall be set aside for defect in form (h).

Disabilities, &c. On conviction of the offender he is precluded from enjoying any public office, civil or military: practising law or physic: or becoming executor, adminis-

- (a) Choses in action included, 12 Co. 1. 1 Ro. Rep.
- (b) Copyholds included, 1 Leon. 97. Owen 97. S. C. 4 Leon. 239. semb. contra, et 35 Eliz. c. 2, s. 5. Query as to trusts, Lane, 39. Estates tail are not bound in the hands of an heir, except on conviction of ancestor by verdict, 2 Show. 112. Moore, 523, sed vide Gage's case, Cro. Eliz., 845.
 - (c) 1 Jac. 1, c. 4, s. 5. (d) 23 Eliz. c. 1, s. 9.
 - (e) 3 Jac. 1, c. 4, s. 11, 12.

- (f) In nomine pana. 1 Jon. 24.
- (g) 23 Eliz. c. 1, s. 5. 29 Eliz. c. 6, s. 1, 8. 2 Atk. 155. The jurisdiction, &c. of these offences, is regulated by 29 Eliz. c. 6, and 3 Jac. 1, c. 4, and vide. 1 And. 138. 2 Show. 297. Skin. 99. S. C. Hob. 204.
- (h) 3 Jac. 1, c. 4, s. 16. Cro. Car. 504. 1 Jon. 437. S. C. 1 Show. 309. 5 Mod. 141, outerfois acquit. 11 Co. 60, 65.

trator or guardian (a). And every person retaining, maintaining, relieving or harbouring any offender, ether than his father, mother or ward, forfeits the sum of 10d a month (b).

But after submission, conformity, and obedience, the offender is discharged by various statutes (c) from the pains and societures of recusancy: the profits of his lands received in the intermediate time, however, are not restored to him (d).

 Of Recusants persuading others to absent themselves, or impuga the King's Ecclesiastical authority.

THE statute which defines and punishes these Persuading offences, is virtually repealed, as to Protestant Discothers. senters who take the oaths of allegiance and supressacy, and subscribe the declaration against transubstantiation; or, being Quakers or Moravians, who make the declarations and profession of belief mentioned in a praceding chapter: with respect to others, it remains in force.

Every person above the age of sixteen years, having obstinately refused, on monition, or lawful request, to go to church, and subsequently to such refusal, forborne for one month to attend there, without reasonable cause of absence; who, after the expiration of the said month, advisedly practises or attempta, by

⁽a) 3 Jac. 1, c. 5, s. 8, 22. the wardship is intrusted to a conformist.

⁽b) Ibid. s. 32, 33.

⁽c) 23 Eliz. c. 1, s. 20. 29 Eliz. c. 6, s. 6. Jac. 1, c. 4,

s. 2. 3 Jac. 1, c. 4, s. 17. 3 Keb. 527, &c. T. 23. Car. 1. Styl. 26: 2 Show. 179, 281, 238. 2 Buist. 324. Cro. Jac.

^{365. (}d) Sav. 130.

printing, writing, or express words or speeches, to persuade any person in the realm to impugn the King's authority in ecclesiastical matters; or to that end, advisedly or maliciously persuades any person to abstain from coming to church, or to be present at unlawful conventicles, under pretence of religion, is liable to imprisonment, till he conforms, and makes a public submission and declaration of conformity; in default whereof for three months after being thereto legally required, he must abjure and depart the realm for ever.

If he refuses either to abjure or depart the realm, or returns from banishment without license, he incurs the guilt of felony, without benefit of clergy. And whether he abjures or not, his goods are forfeited absolutely, and his lands and hereditaments for life. If the offender openly submits and conforms, before he is required to abjure, he is discharged from all penalties; but on relapsing, he loses the benefit of his submission and conformity (a).

3. Of attending another Service than that of the Book of Common Prayer (b).

5 & 6 Ed. 6, THE penalties on this offence have never beenc. 1 unrepealed. mitigated or suspended by any express enactment (o).

⁽a) 35 Eliz. c. 1; 1 Hale, 688, 690.

⁽b) Vide supra, p. 49. n.(c).

⁽c) The statute is not noticed by any of the Toleration

acts; but the 16th section of 1 W. & M., s. 1, c. 18, was probably intended, though ineffectually, to suspend its operation.

Any person within the King's dominions, willingly and wittingly present at any form of Common Prayer, administration of the sacraments, making of ministers, or other rite contained in the book of Common Prayer, other than is therein set forth, or that is contrary to the statute 2 & 3 Ed. VI., c. 1, is liable, on conviction, before the justices of oyer and terminer, justices of assize, or of the peace in their session, by a jury, his own confession, or otherwise, for the first offence, to imprisonment for six months; for the second offence, to imprisonment for one whole year; and for the third offence, to imprisonment for life (a).

Persons present at an unlawful service, may at any Oaths, &c. time be required, by any justice of the peace, to may be required. take the oaths of allegiance and supremacy, and make the declaration against transubstantiation; or being Quakers, attending their own meetings, to make the usual declarations, and profession of belief; and, on refusal, the offender in either case Penalties is committed to prison, and his name certified to on refusel. the next general or quarter sessions; and on a second tender at the sessions, and refusal, he is deemed a Popish recusant, and suffers accordingly(b).

And no person liable to take the oaths, on refusal, is permitted to make the declaration against transubstan-

(a) 5 & 6 Ed. 6, c. 1, s. 6, revived by I Eliz. c. 2, and 1 Jac. 1, c. 25, s. 48. Prayer Book was last altered by 13 & 14 Car. 2, c. 4, and all laws made applicable to (b) 1 W. & M., s. 1, c. 18,

tiation and assent to the articles enumerated in the Toleration act, though subsequently required, unless such person, within thirty-one days after the original tender, produce two Protestant witnesses to testify on oath, their belief of his being a Protestant Dissenter; or a certificate under the hands of four Protestants, who conform, or have taken the oaths and subscribed the declarations afosesaid, and a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them (a).

And in the meantime, he must give a recognizance, with two sureties in the sum of 50l, for producing the same, or be imprisoned until the same is produced (b).

 Of being present at unlawful Conventicles, after monition, and obstinate refusal to attend at Church.

At unlaw. This section of the penal laws does not apply to ful convenion conventicles authorised by the Toleration acts (c).

The offence in question, when substantiated with the minute precision required in order to convict of the offence of persuading others to absent themselves from church, or impugn the King's ecclesiastical authority, is, by the same statute, liable to the same rigorous punishment (d).

⁽a) 1 W. & M. s. 1, c. 18, stat. 5 & 6 Ed. 6, c. 1, s. 6. 8. 14. (b) Ibid, s. 15. stat. 5 & 6 Ed. 6, c. 1, s. 6. (d) 35 Elis.c. 1. Vide supra, p. 53.

⁽c) Sed vide, p. 54, as to

5. Of permitting unlawful Conventicles to be held.

EVERY person (a) who knowingly permits a reli- Penalty on gious assembly, consisting of more than twenty persons beside his own immediate family and servants, held. to meet in any uncertified place, occupied by himself, forfeits, for every such meeting contrary to law, a sum not exceeding 201., nor less than 20s., at the discretion of two or more justices of the peace, before whom he is convicted. This penalty may be levied by distress; and in case of no sufficient distress, the justices convicting may commit the offender to prison for any period not exceeding three months. appeal lies from this conviction to the general or quarter sessions, on written notice being given to the convicting justices of the intention of the party to prefer an appeal. The justices at sessions, have a power to entertain the appeal, and to award costs against the parties, not exceeding 40s; but prosecutions for this penalty must be brought within six months after commission of the offence; and no person who suffers imprisonment for nonpayment of the penalty, is afterwards liable to its payment.

On appeal from this conviction, it would seem incumbent on the appellant, where the offence on which the conviction is grounded is denied, to prove a compliance with the terms of the act under which he is convicted (b).

⁽a) 52 Geo. 3, c. 155, ss. 2, (b) Rex v. Hall, 1 T. R. 15, 16, 17.

CHAP. III.

OF OATHS AND DECLARATIONS.

Oaths to government

The caths to government already alluded to, as finally settled by various statutes, are those of allegiance (a), supremacy (b), and abjuration (c).

Declaraitons. Of the declarations, the most common is the declaration against transubstantiation (d); to which must be added, the declaration of Protestant belief (e) peculiar to Protestant Dissenting ministers and schoolmasters; and those mentioned in a preceding chapter, to be required of Quakers and Moravians (f).

These eaths, and the declaration against transabstantiation, being not peculiar to Protestant Dissenters, nor, as at present framed, any of them inconsistent with their religious principles, (except with those of Quakers and Moravians, for whom a dustinct provision is made), the design of this chapter does not admit of more than a brief statement of

⁽a) 3 Jac. 1, c. 4; 1 W. & M., s. 1, c. 8, and finally 1 Geo. 1, s. 2, c. 13.

⁽b) Hen. 8: 1 Eliz. c. 1; 1 W. & M., s. 1, c. 8, and finally 1 Geo. 1, s. 2, c. 13.

⁽c) 13 W. 3, c. 6; 1 Anne, s. 1, c. 22; 5 Anne, c. 8; 6 Anne, c. 7; 1 Geo. 1, st. 2, c. 13, and finally 6 Geo. 3, c. 53.

But the abjuration to be made by Quakers, as settled by 8 Geo. 1, c. 6, s. 1, and 22 Geo. 2, c. 46, s. 36, still renounces allegiance to the Pretender.

⁽d) 25 Car. 2, c. 2.

⁽e) 19 Geo. 3, c. 44. (f) Vide supra, p. 37.

the mode of taking and subscribing them, and the consequence of neglect or refusal.

We shall consider, first, the cases within this subject, in which the oaths and declarations may be required; and subsequently, those in which they may be taken and subscribed voluntarily.

Sec. I .- Of requiring Oaths and Declarations.

By the common-law, the oath of fealty or alle-Allegiance giance may be tendered to all persons above the age of all. of twelve years, whether natives, denizens, or aliens, either in the court-leet of the manor (except in the case of aliens), or the sheriff's tourn, which is the court-leet of the county (a).

By statute, it is enacted, that any two justices of Allegiance the peace, or any other person specially appointed and abjuration at the by order in privy council, or by commission under discretion of the great seal, may tender the oaths to government, justices. except the oath of supremacy (or the declaration in lieu thereof, in the case of Quakers and Moravians), to any person whom they suspect of disaffection (b); and every person neglecting or refusing to take, or make them, on certificate thereof, incurs the penalties of Popish recusancy (c).

And the same individuals, by writing, under their hands and seals, personally served, or left at the usual place of residence, with one of the family, may sum-

⁽a) 2 Inst. 121: 1 Hale, P. C. 64.

⁽b) Affidavits are exempted from stamps, 55 Geo.3, c. 184.

⁽c) 1 Geo. 1, st. 2, c. 13, s. 10. 31 Geo. 3, c. 32, s. 18, as to oath of supremacy.

mon any person to appear before them, to take the said oaths, excepting that of supremacy (or make the aforesaid declaration, being a Quaker or Moravian). and if he neglects or refuses, on proof of service of summons, certificate of refusal may be made to the next quarter sessions; and on neglect or refusal there to appear, and take the said oaths, or make the said declaration, his name being publicly read at their first meeting, he incurs the penalties of Popish recusancy (a).

Penalties when discharged. Oaths, &c. of ministers.

But these penalties are discharged, on compliance at any subsequent period (b).

A single justice may require the oaths of allegiance and supremacy, the declaration against transubstantiation, and of Protestant belief, of every Protestant Dissenting preacher or teacher officiating without having taken the said oaths and declaration against transubstantiation; who is liable on officiating before compliance with this requisition, to certain penalties mentioned in a subsequent chapter (c).

Declaration of Quakers.

And a single justice, in like manner, may require of every Quaker attending a meeting for the exercise of religion, the declarations of fidelity and of transubstantiation, under the penalties mentioned in a preceding chapter (d).

Of all persons admitted to office, &c.

And all persons admitted to offices enumerated in a preceding section on qualification for office under the crown(e), as well as to certain other offices, preferments, and employments, specified in

- (a) 1 Geo. 1, st. 2, c. 13, s. 11. ing in certified places. (d) Vide supra, p. 55. (e) Vide supra, p. 29.
 - (b) Ibid, s. 26.(c) Vide infra, Of preach-

various statutes, but subject to the provisions, exceptions, and exemptions in the preceding section mentioned, must within six calendar months (a) after their admission to, or entry on them respectively. between the hours of nine and twelve in the forenoon, in the courts of Chancery, King's Bench, Common Pleas, Exchequer, or general Quarter sessions for the county, city, or place where they respectively reside, or in case of a peer, it may be in parliament if sitting, take and subscribe or set their mark to all the said oaths and the declaration against transubstantiation; of which a register is to be kept, and for which, except in the case of seamen or soldiers under the degree of commission or warrant-officer, a fee of 2s. must be paid. And a special commission may be issued by the crown, to administer the said oaths to persons engaged in the military or naval service (b).

And all persons on whom the duty devolves, Penalties who neglect or refuse to take and subscribe the said on omission caths, or, being Quakers or Moravians (c), to make the declarations and affirmation in lieu of them, in manner aforesaid, are ipso facto, and altogether incapacitated to hold, execute, or enjoy such office or employment, or the profits apportaining thereto; and the same becomes void. And every person thus neglecting or refusing to qualify, who, after the time for so doing has expired, by himself, his deputy, or trustee, executes the said office or employment, on

⁽a) 9 Geo. 2, c. 26, s. 3; 16 Geo. 2, c. 30, s. 3.
(b) 1 Geo. 1, st. 2, c. 13.
(c) It is presumed that

Moravians are entitled to the same indulgences as Quakers, where an oath is required by statute.

conviction in any of the king's courts at Westminster, or at the assizes, is disabled thenceforth to sue in any court of law or equity; to be guardian, executor, or administrator; accept a legacy or deed of gift; hold office in *Great Britain*; or vote for members of parliament; and forfeits 500l. to any one who will sue for the same in any of the king's courts at Westminster, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed (a).

The same penalties attach to neglect or refusal to subscribe the declaration against transubstantiation, coupled with subsequent execution of office or employment; except that the offender is, in this case, only incapacitated to hold office within the realm of England, dominion of Wales, and town of Berwick on Tweed (b).

Sec. II.—Of voluntarily taking and making them.

Before two justices.

JUSTICES of the peace, at the quarter sessions, are required to tender and administer the said oaths and declaration against transubstantiation, to any person voluntarily offering to take and subscribe them, and to keep a register of the same; and for each entry therein, a fee of 2s. 6d. is payable, and a further sum of 6d. for every certificate (c).

Before one justice.

A single justice is empowered and required, at the personal request of any Protestant Dissenter, (except a Quaker), who produces a printed or

⁽a) 1 Geo. 1, st. 2, c. 13. (c) 1 W. & M. st. 1, c. 18, (b) 25 Car. 2, c. 2. s. 2.

written copy of the oaths and declaration against transubstantiation (a), to administer and tender the same, and to transmit them, with an attestation of the taking and subscription thereof being made in his presence, before the next general quarter sessions, to the clerk of the peace of the county, riding, division, city, or place for which he acts as justice. And also to give a certificate thereof to the person taking and subscribing as aforesaid; for which a fee of 2s. 6d. is payable; and the certificate is conclusive of the facts therein stated (b).

Protestant Dissenting preachers and teachers are included in the last-mentioned enactment, but they are also permitted voluntarily to take and subscribe the said oaths and declarations, or their assent to the articles, in the manner specified in a subsequent division of this work (c).

⁽a) There is some doubt as to the declaration here intended; but from the generality of the clause, it must be presumed to mean the declaration above-mentioned.

⁽b) 52 Geo. 3, c. 155, s. 7,

⁽c) Vide infra. Of the exemptions of dissenting ministers.

PART II.

OF THE LAWS PROUDIARLY AFFRORING THE PROTESTANT DISSENTING CLERGY.

CHAP. I.

OF PENALTIES.

SEC. I .- Of such as are not conditionally repealed.

Conditions of Toleration Acts. senting clergy.

IT must be premised, in treating this division of penal enactments, that the benefit of the Toleration as to Dis- and other remedial statutes, can in no instance be participated by those who neglect to comply with the conditions they impose. An omission in this respect leaves the individual to 'the 'rigour 'of the unrepealed enactments.

> On certain conditions, introduced into these remedial statutes, nearly all the subsisting penalties are suspended. One of them, however, of remote date, and great severity, seems to have escaped the vigilance of the legislature: and, it is presumed, that on a rigid construction of their liabilities, the Dissenting clergy would still be found, in all cases, liable to its penalties.

Unrepealed statute.

An act, passed in the reign of Elizabeth, for the uniformity of Common Prayer and divine service, and administration of the sacraments (a), and confirmed by two similar acts (b) of Charles II. (both

- (a) 1 Eliz., c. 2, s. 4, 7, 8, &c.
- (b) 13 & 14 Car. 2, c. 4, s. 2, 14, 19-21, explained and confirmed by 15 Car. 2, c. 6,

s. 6, 7. The Toleration Acts have not touched these sections; the 1 W. & M., st. 1, c. 18, s. 8, exempts the persons therein mentioned from

of which have been since conditionally repealed), enacts that every minister, not being beneficed, nor having spiritual promotion, who, in the exercise of his public functions, refuses to use the service of the Common Prayer book, or uses any other service than is mentioned and set forth in that book (a); or preaches, declares, or speaks any thing in derogation or depraying of that book, or any thing therein contained, on conviction by a jury, his own confession, or notorious evidence of the fact, shall suffer one year's imprisonment for the first offence; but for the second offence, be imprisoned for life. Jurisdiction of this offence is given to the justices of oyer and terminer, or justices of assize; to whom may be associated the archbishop or bishop of the diocese in which the sessions are held: but the mayor of London, and all other head officers of cities, boroughs, and towns corporate in England, Wales, and the marches, to which the justices of assize do not repair, may hear and determine these offences at the times specified in the act: the prosecution, however, is limited to the next general

the disabilities and penalties of certain statutes therein enumerated, not including those in question: the 19 Geo. 3, c. 44, extends these exemptions, so as to include both the statutes of Car. 2, above quoted, but takes no notice of the penalties incurred under these sections of the statute of Eliz. And the 52 Geo. 3, c. 155, although it repeals

certain disabling statutes, leaves these sections precisely as they originally were.

(a) In an indictment, it is not sufficient to allege that defendant used alias preces autalio mode, without adding, "instead of the Common Prayer." R. 3 Mod. 78. An indictment brought at the sessions might be quashed, 2 Str. 1256. 2 Salk. 680.

sessions after the offence, and only one punishment can be inflicted.

SEC. II.—Of Penalties conditionally repealed.

1. On qualifying for Office.

Qualifying, when and how necessary.

The statute (a) which renders qualifying for the exercise of ministerial functions unnecessary, except in obedience to a legal requisition, applies only to that species of qualification which confers an exemption from the penalties of acts of parliament relating to religious worship; and does not refer to those statutes which impose the oaths to government, generally, on persons admitted to office or employment.

For office.

Consequently, all preachers and teachers of separate congregations, who are expressly included in the latter class of statutes (b), are still required to take the oaths to government, and subscribe the declaration against transubstantiation, in the manner and subject to the penalties on neglect or refusal, mentioned in a preceding chapter (c). They are equally entitled with others, however, in respect of this qualification, to the benefit of the remedial enactments in behalf of ex post fucto compliance.

Other kinds of qualifications.

Other species of qualification are mentioned in a subsequent section, and are made the condition of certain immunities therein specified (d).

⁽a) 52 Geo. 3, c. 155, s. 4. (b) 1 Geo. 2, st. 2, c. 13, s. 2, 9 Geo. 2, c. 26, s. 3. (c) Vide supra, p. 61. (d) Vide infra. Of the exemptions of Dissenting clergy.

2. On Preaching in certified places (a).

ALL persons teaching, preaching, or officiating in Officiating any congregation or congregations, assembly or places, suassemblies, for religious worship of Protestants, persedes its whose place of worship is duly certified according to law, are now as fully exempted, without precedent qualification, from the penalties of any acts relating to religious worship, as those who take the oaths and make the declaration prescribed by or mentioned (b) in the Toleration Act, or any other act amending the said act.

Provided that any such person, not having taken Except on the oaths to government, and subscribed the decla-ation. ration (c) against transubstantiation, when required by any one justice of the peace, by writing under

(a) 52 Geo. 2, c. 155, s. 4, `lĺ. These exemptions, like those under the 1 W. & M., s. 1, c. 18, which they supersede, are exclusively con-fined to Dissenting ministers, 2 Atk. 498. The latter act makes it a proviso that the doors of the meeting-house shall not be fastened.

(b) By the Toleration Act, neither subscription to the declaration of assent to the enumerated articles, which may be presumed to be the declaration intended by the term prescribed, nor the declaration against transubstantiation, which is the one mentioned in that act, would severally suffice, to exonerate from the penalties therein mentioned: and the disjunctive or, in reference to the act of 19 Geo. 3, c. 44, does not clear up the ambiguity. This being, however, a remedial statute, the clause relative to the declarations would, no doubt, be read conjunctively. The act, in other respects, is very ambiguously worded,

(d) 52 Geo. 3, c. 155, s. 5. It would be difficult to ascertain the compulsory declaration intended, when used in the singular number, as in this clause; but being identified with the declaration mentioned in section 7, which may be voluntarily made by all Pro-testant subjects, in lieu of qualifying, as it would seem, underthe Toleration Act, it must be presumed to be the declaration against transubstantiation. refusal.

his hand, or signed by him, in his presence, shall take, make, and subscribe the oaths to government, and the declarations against transubstantiation, and Penalty on of Protestant belief: and no such person, who, on being required to take such oaths and make such declaration as aforesaid, refuses to attend the justice requiring the same, or to take, make, and subscribe such oath and declaration, as aforesaid, is permitted to teach or preach in any such congregation or assembly, until he takes the said oaths, and makes the declaration aforesaid, on pain of forfeiting, for each offence, a sum not exceeding 10l., nor less than 10s., at the discretion of the convicting justice (a).

What distance to travel.

But no person is required to go farther than five miles from his home or place of residence at the time of such requisition, for the purpose of qualifying (b).

Congrega. tions below ber.

And teaching, preaching, or officiating in congregations, or religious assemblies, consisting of a the prohi- stegations, or rengious assembles, consisting of a bited num- less number of persons than is prohibited by the statute to meet without license, is placed on the footing of a function performed under the protection of a certificate (c).

3. Of subsisting Liabilities.

THE performance of their duties, in some con-Consequence of gregation or assembly, permitted; and allowed by

> (a) 52 Geo. 3, c. 155, s. 5, the provisions as to recovering the penalty, &c. are mentioned in a preceding chapter, of permitting conventicles to

be held, and apply to all penalties under this act for which no special provision is made.

(b) Ibid, s. 7. (c) Ibid, s. 2.

the Toleration Acts (a), being the sole condition on preaching which Dissenting ministers are now indulged in the cated exercise of their religious functions; it follows, that places the exercise of those functions in any other congregation or assembly, exposes them to the penalties of the statutes restrained by the Toleration Acts.

Hence, teaching, preaching, or officiating in any place of worship, field, or place in the open air, or other place, not duly certified, subjects the offender, not only to the penalties incurred by the laity by being present at unlawful conventicles, but also. unquestionably, to the penalties of the statute of Elizabeth (b) mentioned in a preceding section: and on certificate from the ordinary to two justices of a county, or the chief magistrate of a city or town corporate, the offender is liable, under the statutes of Car. II., above quoted (c), to be imprisoned three months for neglecting to use the book of Common Prayer, for administering the Lord's supper without episcopal ordination, or for preaching and lecturing without episcopal license. assent to the thirty-nine articles, and open reading or assent to the Book of Common Prayer.

And for teaching or preaching in a congregation Preaching or assembly consisting of more than the lawful number, in any place, without the consent of the occu-owner. pier thereof (d); or in any place with the door or with doors faslocked, bolted, barred, or otherwise fastened, so tened.

⁽a) Dissenting ministers are not permitted or allowed to preach in an episcopal church.

s. 2, 14. 19-21; 15 Car. 2, c. 6, s. 6, 7. (d) 52 Geo. 3, c. 155, s. 3.

⁽b) 1 Eliz. c. 2, s. 4.7, 8. &c. (c) 13 & 14 Car. 2, c. 4,

as to prevent any person entering therein during the time of meeting (a), the offender incurs, on conviction, by the oath of one or more witnesses, a forfeiture for each offence of the first class, of a sum not exceeding 301., nor less than 40s.; and of the second class, of a sum not exceeding 201., nor less than 40s., at the discretion of two or more convicting justices.

Preachers. cused by ex post facto qualification.

It must be observed, in this section, that Dissent-&c., not ex- ing ministers are excluded from the provision which exonerates Protestant Dissenters in general from the penalties of acts relating to religious worship, on ex post facto qualification (b).

CHAP. II.

OF IMMUNITIES AND EXEMPTIONS.

SECT. I.—From Civil and Military Service and Office.

1. Of Dissenting Ministers in trade; being Teachers of separate Congregations.

52 Geo 3, c. 155, does not extend to them.

THE 52 Geo. III., c. 155, being only an enlargement of the Toleration Act, and repealing neither of the preceding remedial statutes, it is necessary for ministers engaged in trade, although teaching a separate congregation, since to them the first-mentioned

(a) 52 Geo. 3, c. 155, s. 11. (b) 10 Anne, c. 2. statute, as it regards this subject, does not apply, to qualify under one or other of the following enactments, in order to avail themselves of the immunities and exemptions specified in this chapter.

Every teacher (a) or preacher, in holy orders, or pre- Statutes untended holy orders, that is, a minister, preacher, der which they must or teacher of a congregation (b), who takes the oaths qualify. to government, and subscribes the declaration against transubstantiation, at the general or quarter sessions for the county, town, part or division where he lives (c), (which such court is empowered to administer, and enter of record, the clerk of the peace being entitled to a fee of sixpence for the same); and also subscribes the thirty-nine articles, except the thirtyfourth, thirty-fifth, and thirty-sixth, and these words of the twentieth article, viz. "the church hath power to decree rites or ceremonies, and authority in controversies of faith and yet:" or in case he scruples the baptising of infants, except also, part of the twenty-seventh article touching infant baptism; is exempted from serving on juries (d), being chosen or

(a) 1 W. & M., s. 1, c. 18, s. 11, extended to Unitarians by the 53 Geo. 3, c. 160.

(b) It would seem, that to come within this section of the Toleration Act, the party must be attached to a separate congregation, R. v. Justices of Denbighshire, 14 East, 284 n. (a).

(c) A preacher or teacher duly qualified, may officiate under this act, in any congregation duly certified in any county; but if required must produce the certificate of his qualification, under the hand of the clerk of the peace. 10 Anne, c. 2, s. 9.

(d) The late Jury Act has deprived Dissenting ministers engaged in trade of this privilege, it being thereby enacted that none but teachers or preachers of Dissenting congregations described in the ninth section of the 52d Geo. 3, c. 155, shall be exempted from serving on juries; and such persons must produce a

appointed to the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division or wapentake, whether the same were in being at the time of the passing of this enactment, or has been subsequently created (a).

Civil services and a militia.

And every such person being a preacher or teacher of any congregation, and scrupling (b) to declare and subscribe his assent to any of the articles aforesaid, who makes and subscribes, instead thereof, the declaration of Protestant belief, is entitled to the same exemptions from civil service, and is also exempted from serving (c) in the militia: and the justices at the general sessions for the county or place where he lives, are required to administer the said last-mentioned declaration to such person offering to make and subscribe the same, and thereof to keep a register; and for the entry thereof, with the oaths and other declarations aforesaid, a fee of sixpence only is due; and an additional fee of sixpence for any certificate of the same.

Meaning of holy orders, &c.

The certain meaning of the phrases, 'holy orders,' 'pretended holy orders,' and 'pretending to holy orders,' is not ascertained; but whether, according to the opinion of Lord Ellenborough, holy orders originally intended such as are conferred by episcopal ordination; pretended holy orders, those con-

certificate of some justice of the peace, of their having taken the oaths and subscribed the declaration required by law. 6 Geo. 4, c. 40, s. 2.

(a) Kenward v. Knowles,

Willes, 463.

(b) 19 Geo. 8, c. 44.(c) This clause may be presumed to extend to serving by substitute.

ferred by presbyterian ordination; and pretending to holy orders, pretending to have one or other of these two orders: or whether the last phrase implies merely being a candidate (a) for holy orders, thus much has been decided, that it is not essential to the pretending to holy orders, within the eighth section of the Toleration Act, that a person should be the teacher or preacher of a separate congregation; and a mandamus will issue to the justices at quarter sessions, although not expressly required by the statute, to administer the qualification it prescribes: yet such qualifying will not avail to confer on the individual not possessed of the conjoint character of preacher or teacher to a separate congregation, the immunities and exemptions enjoyed under the eleventh section of the Toleration Act, but merely exempts from certain penalties otherwise incurred by the exercise of the clerical function (b).

But although a person in holy orders, or pretending to holy orders, comes within the eighth section of the Toleration Act, even if he has no separate congregation of his own, yet if he applies merely as a teacher or preacher, not pretending to holy orders, he must state himself to be the teacher or preacher of a separate congregation, to bring himself within that section (c).

A rule of sessions, and consequently a requisition

⁽a) This opinion seems probable, since, in s. 8, which exempts from penalties, the designation is used; whereas, in s. 11, which exempts from

offices and service, it is omitted.

(b) R. v. Justices of Gloucestershire, 15 East, 576.

⁽c) R. v. Justices of Denbighshire, supra.

in pursuance of it, that a person applying to qualify himself under the Toleration Act, as a teacher of a separate congregation, shall produce a certificate from two of his congregation authenticating such his appointment, cannot be enforced (a).

Where a party moves, however, for a mandamus to compel the justices to admit him to qualify, he must suggest whatever is necessary to entitle him to be admitted; and if this is not done, or if it be done, and the fact is false, either of these circumstances will be good matter for a return (b).

Providing a substitute.

Exemption from serving personally, or providing a substitute to serve, in the militia, is also conferred on every teacher of any separate congregation, who has been licensed twelve months, at the least, before the yearly general meeting referred to by the act which Local Mili- creates this exemption (c). But there are no exemptions from ballot or service under the Local Militia or Training acts in favour of Dissenting ministers carrying on trade.

tia and Training acts.

2. Of Dissenting Ministers not in Trade.

Exemptions under 52 Geo. 3.

Or such individuals it is enacted, that every person who teaches or preaches in any congregation c. 155, s. 9. or assembly, or congregations or assemblies for religious worship of Protestants, whose place of worship is duly certified according to law: who

> (a) R. v. Justices of Suffolk, 15 East, 590. (b) Peat's Case, 6 Mod. 310.

> from which also it appears, that a mandamus does not lie to compel the justices to take

security of a Dissenting minister, against his becoming chargeable to the parish. (c) 43 Geo. 3, c. 10, which

amends the 42 Geo. 3, c. 90.

employs himself solely in the duties of a teacher or preacher; and follows no trade or business, or other profession, occupation or employment, for his livelihood, except that of a schoolmaster; and who produces a certificate of some justice of the peace of his having taken the oaths to government, and declaration, mentioned in the seventh section (a), shall be exempt from the civil services and offices specified in the Toleration Act, and from being balloted to serve, and from serving, in the militia or local militia of any county, town, parish or place in any part of the United Kingdom. But every person producing a false or untrue certificate or paper, as a true certificate of his having made and taken the oaths and subscribed the declarations above mentioned, for the purpose of claiming exemption from civil or military duties, forfeits for each offence the sum of 501., recoverable by any person who will sue for the same in any court of record at Westminster, in the courts of great sessions in Wales, or in either of the courts of the Counties Palatine, as the case may require; wherein no essoign, privilege, protection or wager of law, or more than one imparlance shall be allowed. But such actions are made local, and are limited to be brought within three months after the offence: the defendant may plead the general issue, and give the act and special matter in evidence under it, and recovers treble costs in case the plaintiff is nonsuited or fails in the suit.

(a) s. 9. This must still be understood to mean the declaration against transubstantiation, which may be voluntarily taken, ut. sup. p. 63; and if so, the declaration of Protestant belief is waived: sed vide s. 11. as to certificate. SEC. II .- Exemption from Taxes, &c.

Exemption from taxes.

Any preacher of a Dissenting congregation, or person dissenting from the church of England, in holy orders or pretended holy orders, entitled to the benefit of 1 W. & M., s. 1, c. 18, or 19 Geo. III., c. 44, who is not possessed of an annual income of 100*l*. or upwards, however arising, is exempted from the duty payable in respect of wearing hair-powder (a).

CHAP, III.

OF RIGHTS AND LIABILITIES.

THE scope of the Summary, as already explained, admits a particular notice of those cases only in this chapter, which are distinguished from the ordinary rights and liabilities of British subjects by some peculiarity, either of positive variance or special appropriation.

More than an incidental mention of such as are common to all, would be foreign, and consequently superfluous (b).

(a) 48 Geo. 3, c. 55, (Sch. I). It may be observed that Dissenting ministers, in common with all other persons, are exempted from duty on carts and horses, used solely for the purpose of conveying themselves and families to and from any place of worship on a Sunday, Christmas-day, Good-Friday, or other day appointed for public fast or thanksgiving, itid (Sch. D.

E. no 1).

(b) Many cases of this common order may be found under the head Mandamus, in Comyn's Digest; and others in the King's Bench and Equity reports, under the titles of Charitable Uses, Trusts, and the various titles enumerated in a subsequent section, "Of the Charities and Trusts of Protestant Dissenters."

Sec. I.—Of election, admission to, and duration in Office.

In the absence of provision or covenant in an How far original trust, or of special agreement or understanding between the parties, the usage of Protestant Dissenters, in their respective communions, furnishes the rule of proceeding for the election of ministers, their admission, and duration in office. And the principle of public policy does not extend to the case of Dissenters, so as to prevent a court of Equity from sanctioning the appointment of a minister to a congregation for a limited period, and not for life, provided such is the usage of the members, or the provision of the original trust (a).

But where there is an original trust, or a special w_{here} exagreement or understanding between the parties, the press provisions respectively contained therein, so far as the made. same can be collected by inference and fair presumption, supply the only rule by which the courts will regulate the nature and extent of their interposition (b).

If a minister has been duly elected, or claims a Mandamus right which is litigated by another without colour of to admit. title to an endowed pastorship, or a function with emoluments, and there is no specific legal remedy, the court of King's Bench, on a proper case previously shewn, but without requiring a title to be established, will grant a mandamus to the trustees to admit, even though the other party is in possession: the

⁽a) Attorney General v. Pearson and others, 3 Meriv. 402. R. v. Jotham, 3 T. R. 577.

⁽b) Attorney General v. Pearson and others, 409. Attorney General v. Fletcher and others, M. S.

election and appointment constitute a legal right. which a mandamus to admit enables him to try, and the use of the meeting-house and pulpit is incident to the clerical function. But an affidavit of the registering of the meeting-house would probably be required of the party making the application (a).

How far usage obtains.

Sec. II.—Of Suspension, Removal, and Restoration. In the absence of an original trust, a special agreement, or an understanding between the parties, it is presumed, on the authority of the cases already quoted (b), that usage determines in whom the power of suspending, removing, and restoring resides, as well as the mode in which it must be exercised.

But in a case of endowment, where the minister has a certain interest in his office not depending on the voluntary contributions of the congregation, it is doubtful how far usage would justify a removal without reasonable cause. A mandamus to restore an endowed minister who has been expelled by the majority of his congregation, has been granted in order to enable him to try their right of dispossessing him; but in such case, the party applying must make out a prima facie title to the office, and shew that he has complied with all the ceremonies and forms necessary to constitute his right, according to the practice of the particular community to which he

Mandamus to restore.

> (a) R. v. Barker, 3 Burr. 1265, 1043. The mandamus was grounded on an affidavit of pastorship, the election of claimant by a majority, and the subsequent act of trustees. 3 T. R. 577. 1 T. R. 398. 1 W. Bl. 300, 352. 2. T. R.

(b) Vide supra, p. 77. Where a power of removal is not given to any particular part of a body, it rests with the society at large. 8 T. R. 356; 2 Str.

100, 259,

belongs, and he would, probably, be expected to produce an affidavit of the registry of the meetinghouse (a).

But where a trust-deed invests certain individuals Power of with an authority, quasi visitors, to dismiss or sus- trustees under a pend a regularly appointed minister at their own will deed. and pleasure, the courts cannot interfere, however improper the dismissal or suspension may be; if, however, it is provided, that the same shall be done according to certain rules, constitutions, and requlations specified in the deed, it must be made to appear that they are applicable to the particular case: and before the courts will lend their assistance to enforce the sentence, they will be satisfied that those rules, constitutions, and regulations have been com-It is doubtful whether the courts of plied with. justice in this kingdom will, under any circumstances, enforce the rules of a community established in a sister kingdom, which in that kingdom are not entitled to similar assistance (b).

SEC. III.—Of Devises and Legacies.

THE religious persuasion of Protestant Dissenters being tolerated by law, affords no pretext for invalidating a devise or legacy; and certain devises may be valid as appointments under the statute of Elizabeth, which could not be sustained under the Statutes of Mortmain.

Hence, a devise to a person nominatim, but de- Devise to scribed as the preacher of a certain meeting-house, a preacher. of an estate for life, on condition of settling to certain

(a) R. v. Jotham, supra, p. (b) Attorney General v. Fletcher and others. M. S.

To Dissenting ministers.

charitable uses after his death, is a good devise to the party for his life, though void as to the remainder (a); and a devise in trust, "for those persons that are commonly called Dissenting ministers." naming some of them, is also good as it regards the ministers, notwithstanding the Statutes of Mortmain (b).

Bequest to fund of Dissenting ministers.

So a bequest in augmentation of a fund for poor Dissenting ministers living in any county in England, is held good, notwithstanding its uncertainty; and it being proved that there were three distinct societies of Dissenters in England, the bequest was ordered to be distributed among the poor of each society (c).

For nonconforming ministers.

A bequest in trust for "nonconforming ministers and Dissenters" is good, it being no longer considered a dedication to a superstitious use; and even though it has lapsed in law, it will survive in equity. where there is sufficient to sustain it as an appointment under the statute of Elizabeth; but a court of Equity will sometimes divert the use (d).

To a Bap-

On the same principle, an annuity to the minister tist minister. of a Baptist meeting-house and his successors, has been held to be good (e); and in another case of a similar character, the court went still further: for some of the lands devised being copyhold, and not

> (a) Doe dem. Phillips v. Aldridge, 4 T. R. 265; Duke, 82; Poph. 139.

(b) Lloyd v. Spillet, M. 1734; 3 P. W. 346. A legacy to Baptists generally, 2 Ves. 275; to Presbyterians, 15 Ves. jun. 234; and to Quakers, Highmore, 146, are respectively good. (c) Walters v. Childs, M.

1765; Amb. 524.

(d) Attorney General v. Hickman, 1732; 2 Keb. 34, p.

(e) Attorney General v. Cock, 2 Ves. 273.

having been surrendered to the use of the will, the surrender was supplied by ordering the trustees to be admitted (a).

So a bequest to maintain a preaching minister (b), A preachand a legacy to ejected ministers, being respectively ing minister and ejected Protestant Dissenters, have been severally held to ministers. be good (c). But a court of Equity regards with a jealous eye, bequests for the encouragement of itine- Itinerant rant preachers (d). And a bequest of money to be preachers. laid out in land, for the benefit of two preachers at a To be laid chapel, although it is to be invested till an eligible pur-out in land. chase can be made, is void under the Statute of Mortmain; and not supported by supposing a discretion in the trustees not to lay it out in land, the directions being imperative. And a gift of part of the fund to certain persons the then preachers is also void (e).

Foreign Protestant ministers domiciled ill this Foreign country, it seems, are entitled on the same terms, to ministers. the privileges of Dissenting ministers (f).

Sec. IV .- Of Votes for Members of Parliament.

COMMITTEES have in general disallowed the votes Votes for of Dissenting ministers (g); but where it can be dis-freeholds. tinctly shewn, that they hold their situations for life, and have a sufficient freehold interest in land in respect thereof, it is presumed their votes are equally valid with those of the Established clergy.

- (a) Attorney General v. Andrews, 1 Ves. 225.
- (b) Duke, 82; Poph. 139. (c) 1 Vernon, 248; 2 Vern. 105; 1 Vesey, jun. 469; sed quære as to the use.

(d) T. 1804; 10 Ves. 22; 7 Ves. 50 (n).

(e) Grieves v. Case, 1 Ves.

(f) R. v. Hube, Peake, 181. (g) Heywood, 2d ed. 130, 133; Gloucestershire Ca. 176; Tewksbury, ibid, 193; Bedfordshire Ca., 2 Ludl. 433; Yorkshire Ca., 1807; Male Elect. 272.

SEC. V .- Of Actions, &c.

In an action of slander brought by a minister for Allegations in pleading consequential damages in being prevented from preaching and deprived of the profits of office, the declaration is sufficient, after verdict, though it has not mentioned by name the persons by whom he was so prevented from preaching, nor alleged that by any or what authority they excluded him, or that he was a preacher duly qualified (a).

> It is presumed, however, that the omission of the allegation as to the authority or right to exclude would have been good ground for demurrer (b).

Molesting a preacher.

Persons guilty of disturbing, molesting, or misusing preachers or teachers officiating in any lawful assembly, are punishable in the manner stated in a subsequent section (c).

PART III.

OF THE LAWS PECULIARLY AFFECTING PROTES-TANT DISSENTING SCHOOLMASTERS.

CHAP. I.

OF QUALIFICATIONS.

SEC. I .- Of Oaths to Government.

Every department of tuition included.

MASTERS, presidents, or tutors of colleges, or other public or private institutions for the education of youth, schoolmasters, private tutors, teachers or read-

(a) Hartley v. Herring, 8 T. R. 131; I Taunt. 39. (b) 8 East, 1; 2 B. & P. 284. (c) Vide infra, p. 92.

ers to pupils (a), are all included in the number of those whose profession imposes upon them the oaths and declaration of office, or being Quakers, the declarations, affirmation, and profession of Christian belief, respectively mentioned in preceding chapters (b).

The time, mode and place of taking and making these, and the penalties incurred by persons neglecting or refusing them, as well as the design and operation of the Indemnity acts which extend to such offenders, have been already sufficiently explained (c).

Sec. II .- Of specially qualifying.

EVERY department of tuition being prohibited to Protestant Dissenters by various statutes and canons, it is only on condition of qualifying specially, that they are now permitted under a remedial statute (d), to exercise these professions with impunity.

The special qualification required, consists of the In what it oaths of allegiance and supremacy, the declaration consists, and when against transubstantiation (or, in the case of Quakers, to be taken. of the declarations and professions ordinarily enjoined in lieu thereof), and the declaration of Protestant belief (e): and this qualification being in no case

- (a) Tutors of colleges, and academies for theological students, teachers and assistants at Sunday and charity schools, assistants, ushers, and female teachers, come within these provisions, 13 & 14 W. 3, c. 6; l Ann. c. 22; 1 Geo. 1, st. 2,
- (b) Vide supra, as to Dissenters generally, p.60. As to Quakers, p. 37.
- (c) Vide supra, p. 60. The qualification prescribed by 19 Geo. 3, c. 44, exempts only it is presumed, from penalties on teaching and instructing, not from those incurred by the omission in question.

(d) 19 Geo. 3, c. 44, s. 2. (e) Vide supra, as to Dissenters generally p. 58, as to Quakers, p. 37.

capable of completion (a) elsewhere, should be made by Dissenters in general, at the *general* sessions of the peace for the county or place where the person desirous of qualifying resides; the justices there are required to tender and administer this qualification to persons offering to make it; and to keep a register thereof, for which the fees of 6d. on registering, and 6d. for any certificate thereof, are severally payable (b).

But the declarations, except that of Protestant belief, which must be taken at the general sessions (c), must, by Quakers, be made at the general quarter sessions (d).

But persons so qualifying are not enabled to obtain or hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same has been founded since the 1st year of the reign of William and Mary, for the immediate use and benefit of Protestant Dissenters (e).

SEC. III.—Of Penalties.

How far excused by extuition, who have neglected or refused to qualify specially for this purpose, are exposed to the penalties and disabilities subsequently enumerated; from which it seems, except from those incurred under the 23 Eliz., c. 1, the provision (f) enabling Protestant Dissenters to qualify at any time during a prosecution,

⁽a) No single justice is empowered, it would seem, to administer the declaration of Protestant belief, 52 Geo. 3, c. 155, s. 7.

⁽b) 1 W. & M. s. 1, c. 18,

ss. 2, 8; 19 Geo. 3, c. 44, s. 2.
(c) 19 Geo. 3, c. 44, s. 2.
(d) 1 W. & M. s. 1, c. 18,
s. 13.
(e) 19 Geo. 3, c. 44, s. 3.
(f) 10 Ann. c. 2.

is no exemption; as it applies only to the penalties and disabilities contemplated by 3d section of the Teleration Act.

Every schoolmaster kept or maintained by any person, body politic, or corporate, who does not repair to church according to the statute, or is not allowed by the ordinary of the diocese where he is so kept, beside incurring the penalties inflicted on Protestant Dissenters generally for the former offence (a), and ecclesiastical censure for both, is, on conviction, before any justices of the peace within a year and a day, or before the justices of Over and Terminer and assize and gaol delivery, or justices of the peace at quarter sessions, disabled to teach youth, and liable to imprisonment for one year; but on submitting and conforming before the ordinary or justices at any time previous to judgment, and recognising such submission in open assizes or sessions, he is once discharged from pains and disabilities (b).

Every person who keeps a school or is a schoolmaster out of either of the universities or colleges, except in public or free grammar schools, or in the houses of persons not recusants, who is not licensed by the ordinary of the diocese, forfeits for every day he willingly offends, the sum of 40s., to be recovered in any of the courts at Westminster by whoever will sue for the same (c).

Every schoolmaster keeping a public or private

⁽a) Sed vide 52 Geo. 3, c. 155, s. 4, which applies equally to schoolmasters.

⁽b) 23 Eliz. c. 1, and any person or body politic or corpo-

rate, keeping such a schoolmaster, forfeits for every month he keeps him, the sum of 10*l*,

⁽c) I Jac. 1, c. 4, s. 9. The person retaining an unlicensed

school, or tutor in a private family, who, at or before his admission to employment, does not subscribe a declaration of conformity before the ordinary. is utterly disabled to keep school, and ipso facto deprived of the same, and the same shall be void as though he were naturally dead (a). And if he instructs or teaches youth before license from the ordinary. (for which he shall pay 12d. only) and subscription of conformity, he is liable to three months imprisonment for the first offence, and for every subsequent offence to the same imprisonment, and a forfeiture of 51. to the king (b).

The canons of the church forbid all persons to teach or instruct youth without license and subscription: and also to keep school in a country town where a public school is already founded: but if a suit is instituted in the ecclesiastical court for disobedience, a prohibition lies as to all but grammarschools, and it would seem, even to them (c).

tutor is liable to the same penalty. It seems, however, that this act extends only to grammar-schools. Ld. Raym.

(a) 13 & 14 Car. 2, c. 4. s. 8, 9, 10.

(b) Ibid, s. 11.

(c) Canons 77, 137, &c. Vide Cox's case, M. 1700. Oldfield's case, M. 9 W.

Cases in Burn's Eccl, L. 325. E. 10 W. M. 10 W. T. 11 W. T. 12 W. Dub. Sal. 672. R. Carth. 464. As to whether the office of schoolmaster is public or private, whether a schoolmaster is a layman, and where a mandemus will lie, vide Gibs. 1110; 3 Burn, Eccl. Law, ; Comyn's Digest, title Mandamus, &c.

CHAP. II.

OF RIGHTS AND DISABILITIES.

SEC. I .- Of the Rights and Disabilities of Schoolmasters.

The rights of Protestant Dissenting schoolmasters, In what duly qualified, are in most respects similar to those different of conformists in the same profession; their exclusion, from those however, by statute, from public appointments, except formists. among Dissenters, has been already noticed; but this does not apply to the appointment of a Dissenter to deliver lectures in the school-room of a charity when not used as a school, in which, by a proviso of the original trust, no doctrines shall be taught contrary to those of the church of England, the subscribers contributing the amount of his salary: nor is such appointment a contravention of the original trust (a).

Dissenting schoolmasters who hold their situations for life, or quandiu se bene gesserint, and are not removeable but for good and sufficient cause, if they have a sufficient interest in land, are entitled to vote in respect thereof, for members of Parliament (b).

SECT. II.—Of Charity and Free Schools.

In the absence of express provisions to regulate Of the rethe appointment of tutors and masters to those insti- gulations tutions among Protestant Dissenters to which they by which they are are eligible, it is apprehended that usage must supply governed the rule, as to their election, admission, duration in office, suspension, removal and restoration (c).

Subject to a certain extent to this rule, the ordinary

6. T. R. 396, 398.

⁽a) In re Macclessield School, M. 1818. 6 Price, 214.

⁽b) Male Elect. 273.

⁽c) Vide supra, p. 77, n (a); and also Witherall v. Gartham,

regulations of the courts of Equity apply to the institutions of Protestant Dissenters (a). But it must be observed of such institutions in general, that they are regarded with some degree of suspicion, as being conducted by unlicensed teachers, under no regular authority, the nature of the books being seldom ascertained, and the tutors and teachers frequently employed only for a limited or uncertain period: and although the courts will interpose on behalf of such institutions, to enforce their particular provisions. where no other objection occurs, yet where a degree of uncertainty exists as to the design of the trust. they will sometimes avail themselves of that circumstance to modify the use (b).

This subject will be further noticed in a future section of the charities and trusts of Protestant Dissenters.

PART IV.

OF THE LAWS RELATING TO PROTETSANT DIS-SENTING PLACES OF WORSHIP.

CHAP. I.

OF RESTRICTIVE ENACTMENTS.

Sec. I.—Of Assemblies not requiring registration.

Assemblies persons.

A CONGREGATION or assembly for the religious than twenty worship (c) of Protestants, at which are present no Vide Moggeridge v. Thackwell, (a) The 58 Geo. 3, c. 91,

and 59 Geo. 3, c. 81, regulating charities for the education of the poor, did not extend to Quakers.

(b) Attorney General v. Stepney, T. 1804. 10 Ves. 22.

7 Ves. 50 (n). (c) Reading prayers, or a sermon to a family, is not construed to be divine service. 2

Atk. 499.

shore than twenty persons, beside the immediate family and servants of the person in whose house, or on whose premises such meeting, congregation, or assembly is held (a); or in the case of Quakers, a congregation or assembly consisting of no more than four persons beside those of the same household, if held in a house inhabited by a family, or if in a house, field, or place where there is no family inhabiting, then no more than four persons (b), may meet without certificate and registration; and such an assembly is placed on the same footing of protection as one that is duly certified and registered.

SEC. II.—Of Assemblies requiring registration (c),

No congregation or assembly for the religious Assemblies worship of Protestants, at which are present more than twenty than the numbers respectively mentioned in the prepersons. ceding section, of Protestant Dissenters in general, or of Quakers, is permitted or allowed, if not duly certified under some act or acts prior to the 52 Geo. III., c. 155 (under which prior act or acts the Quakers must still certify) (d); unless and until the place of meeting shall have been, or shall be certified to the bishop of the diopese, to the archdeacon of the archdeaconry, or to the justices of the peace, at the general or quarter sessions of the peace for the

⁽a) 52 Geo. 3, c. 155, s. 2. It does not include Quakers.

⁽b) 22 Car. 2, c. 1, s. 1, limits the number, it is presumed, as to Quakers.

⁽b) 52 Geo. 3. c. 155, s. 2. The registry and certification should be according to the 1

W. & M., s. I, c. 18, in order to convict, or fectiver on the Rick or Black Acts, Vide infra.

⁽d) Vide the 1 W. & M., s. 1, c.18, s. 19, which prescribes a mode similar to those abovementioned; but allows a fee of 6d. only for the certificate.

county, riding, division, city, town, or place in which such meeting shall be held; of which places of worship so certified respectively, reciprocal returns shall be made once in the year, between the bishop's or archdeacon's court, and the quarter sessions. And all such places shall be registered in the bishop's or archdeacon's court respectively, and recorded at the general quarter sessions, by the registrar or clerk of the peace, who is required to register and record the same; and the bishop, or registrar, or clerk of the peace, to whom any such place of meeting is certified under this act, must give a certificate thereof, to any person demanding the same, for which no greater fee than 2s. 6d. shall be taken.

Who may certify.

Under these acts, any Protestant Dissenter may certify a meeting-house (a), and the certificate and registry being no proof of the requisite qualification, the duty of registering is purely ministerial; and a mandamus issues against the person on whom it devolves, to compel performance. Yet such person, it seems, may return the want of requisite qualification; but if the return is false, an action lies against him, at the suit of those persons at whose instance the mandamus issued; and it should be brought in the King's Bench, in order to make it the basis of a peremptory mandamus (b).

If a conviction on these acts undertakes to negative such exceptions as are proper ground of defence, and does not negative all of them, the omission is

⁽a) Green and others v. shire, 1 W. Blk. 606; 4 Burr. Pope, 1 Ld. Raymond, 125. 1991, S. C.

⁽b) R. v. Justices of Derby-

not fatal; but the exceptions negatived may be rejected as surplusage (a).

Places of worship not authorised by the Toleration $U_{nauthor}$. Acts, are still deemed illegal, and subject those who is preceding them to the penalties already specified in a preceding chapter (b).

The penal consequences of permitting unlawful assemblies to be held, and of officiating at them, either with or without permission of the occupier of the premises, have been already sufficiently stated (c).

Sec. III. - Of Open Assemblies.

No meeting, assembly, or congregation for religi-Fastening ous worship, requiring a certificate, may be held in the door, any place, with the door locked, bolted, or barred, or otherwise fastened, so as to prevent any persons entering therein during the time of such meeting (d); but this prohibition does not extend to the meetings for discipline among Quakers, although there may be occasionally, praying and preaching in them (e).

The penalty incurred by the minister officiating in such places, has been already noticed (f).

(a) R. v. Hall, 1 T. R. 320.
(b) Vide supra, pp. 54, 56.
The 57 Geo. 3, c. 19, excepts
from the provisions against seditious meetings and assemblies, the meetings or societies
of Quakers, and all other
meetings for religious or charitable purposes only; it also
excepts Quakers' meetings for

charitable or religious purposes from the provisions of 39 Geo. 3, c. 79, respecting Freemasons.

(c) Vide supra, pp. 57, 69. (d) 52 Geo. 3, c. 155, s. 11.

(e) Finch v. Batger, Guild-hall, N. P. per Macdonald, C. B.

(f) Vide supra, p. 69.

CHAP. IL.

OF PROTECTIVE ENACTMENTS.

Sec. I.—Of Disturbing a Lawful Assembly.

Disturbing religious assemblies: generally, how punish-

By a recent statute (a) it is enacted, that any person wilfully and maliciously or contemptuously disquieting or disturbing any meeting, assembly, or congregation of persons authorised by this act or any former act or acts of parliament, or in any way disturbing or molesting, or misusing any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, on proof thereof before any justice of the peace, by two or more credible witnesses, must find two sureties to be bound by recognizances in the penal sum of 501. to answer for such offence; and in default of sureties, is to be committed to prison till the next general or quarter sessions; and on conviction there, incurs a penalty of 401,; and this penalty may be levied by distress, under the hand and seal, or hands and seals of two justices of the peace for the county, riding, city or place in which such offence was committed, or forfeiture incurred; one moiety to be paid to the informer, and the other molety to the poor of the parish where the offence was committed, and in case of no sufficient distress, the said justices may commit the offender to prison for any period not exceeding three months; but no penalty can be recovered under this act unless

(a) 52 Geo. 3, c. 155, s. 12, 15, 17.

the offence is prosecuted within six months after its commission; and no person who suffers imprisonment for nonpayment of the penalty is afterwards liable to its payment. This enactment, however, does not extend to Quakers (a), nor to any meetings or assemblies for religious worship, held or convened by them; they are nevertheless within the protection of the following enactment.

Any person who wilfully and of purpose, malici-Coming into ously or contemptuously comes into any congregation in order to permitted by the Toleration Act, and disquiets or disturb disturbs the same, or misuses any preacher or teacher. them. incurs, on information and conviction thereof, in a manner similar to that above-mentioned, a penalty of 201, to the use of the crown (6).

In order to sustain an indictment for these offences. the place of meeting must be proved to have been duly registered; and where a disturbance to the worship is complained of, it seems necessary to prove the service to have actually commenced: but in such case, it is not now necessary to prove the personal qualifications required by the Toleration Act (c). An indictment for these offences at the quarter sessions may be removed by certiorari into the King's Bench before verdict: and on conviction of several defendants on the same indictment, each of them is liable to the whole penalty (d). And the court of King's Bench will grant a criminal information on sufficient affidavits (e).

⁽a) 52 Geo. 3, c. 155, s. 14. (d) S. C. 5. T. R. 542.

⁽b) 1 W. & M. c. 18, s. 18. (e) R. v. Wroughton and (c) R. v. Hube and others, others, 3 Burr. 1683. Peake, C. 180.

Highly indecorous and improper behaviour is deemed a disturbance within the meaning of the eighteenth section of the Toleration Act, even though malice or contempt is not proved: as where the prior clerk of a chapel, assisted by two elders, forcibly removed a newly-appointed clerk from the desk during divine service (a). And the protection of these statutes extends to Lutheran and other Protestant congregations, composed principally of foreigners performing the service in a foreign language (b). An agreement to drop a prosecution for this offence, and a consequent discharge with the consent of the committing magistrates, in full satisfaction and discharge of the assault and imprisonment, is no legal satisfaction to the person so committed, in an action of trespass and false imprisonment brought by him against the magistrates: for either the agreement is Alegal, as stifling a prosecution for a public misdemeanour; or the satisfaction moved from the prosecurtor only and not from the magistrates, whose authority being at an end after the commitment, their consent afterwards is a mere nullity (c).

SEC. II.—Against riotously pulling down, damaging and injuring Places of Worship.

Demolishing or pulling down.

Persons unlawfully, riotously, and tumultously assembled together to the disturbance of the public peace, who unlawfully and with force demolish or pull

⁽a) R. v. Hube and others, supra.

⁽b) S. C. 182. (c) 5 East, 294.

down, or begin to demolish or pull down any changl or building for religious worship certified and registered according to the statute 1 W. & M.s. 1, c. 18, or any dwelling-house or outhouse thereto belonging, are adjudged felons, and incur the penalty of death as in case of felony without benefit of clergy (a). And in such case (b), and also in case the said chapel • or building shall be in any manner damaged or injured, or any fixtures thereto affixed, or any furni- or injuring. ture, goods, or commodities whatever, which shall be therein, shall be destroyed, taken away or damaged by the act or acts of any riotous or tumultuous assembly of persons, or by the act or acts of any person or persons engaged in, or making part of such riotous or tumultuous assembly (c), and the damage sustained exceeds the sum of 301., (d) then in case the said Where chapel or building aforesaid stands in a city or town that is either a county of itself, or is not within any hundred, the inhabitants of the hundred in which such damage is done are liable to make good the same: and the damages incurred may be recovered by action brought in any court of record at Westminster, by the person or persons damnified, in the name of the trustee or other individual in whom the legal fee is vested for existing purposes; or even, it is presumed, in the name of a bare trustee of a satisfied term (e). in trust to apply the damages recovered in rebuilding and repairing such chapel or building as aforesaid; and such damages are to be levied in the manner

⁽c) 57 Geo. 3, c. 19, s. 39. (d) 3 Geo. 4, c. 33. (e) 5 T. R. 14.

⁽b) Ibid, s. 6.

prescribed by the 27 Eliz. c. 13, s. 11, for reimbursing the persons therein mentioned.

But if the chapel or building stands in any city or town, that is either a county of itself, or not within any hundred, the action must be brought against two or more of the inhabitants of such city or town (a).

These actions may be commenced by bill in the King's Bench, or by common capias in the Common Pleas (b), without restriction as to time; when brought on the statutes 41 Geo. 3, c. 24, and 1 Geo. 1, st. 2, c. 5, it is unnecessary to aver, what must nevertheless be proved, that the act of demolition was felonious (c); and in these actions the defendants may now, with the consent and approbation of one or more justices, acting in or for the parish, township or place, in which damages are alleged to have been sustained, suffer judgment by default; but the plaintiff must nevertheless produce the same proof before the sheriff, or other officers taking the inquisition, as would have been required if the action had been defended. And in taxing costs, to which the plaintiff is entitled (d), no more witnesses shall be allowed for than the sheriff or other officer certifies to have been necessary (e).

Where under 301. But where the damage incurred is under 301., the party injured must give one month's notice to the high-constable of the nature of his loss, and of his intention to proceed against the hundred; the high-constable is thereupon to give notice to the resident magistrates,

 ⁽a) 1 Geo. 1, st. 2, c.5, s.6.
 Price, 345.

 (b) 2. Saund. Rep. 377 (b).
 (d) 2 Wils. 91. Cowp. 485.

 (c) 7 Taunt. Rep. 45. 1
 (e) 3 Geo. 4, c. 33, s. 6.

who are to summon a petty sessions; and the justices at such petty sessions are empowered to proceed summarily, and after hearing and examining on eath the party grieved, and the churchwardens, &c., of the parish, or place, to order damages, in their discretion, to be paid to the former, out of the county, city, or town rates. But an appeal to the quarter essions is given to persons thinking themselves aggrieved (a).

CHAP. III.

OF EXEMPTIONS AND LIABILITIES.

Of Rates and Taxes.

UNDER this head are included the land tax; the poor's rate; the window tax; the inhabited house duty; and parochial or ward taxes, as they respectively apply to chapels and charitable institutions.

Beneficial occupation, irrespective of its ultimate Beneficial purpose, constitutes the criterion of rateability, with the criterion of the criterion of the criterion of the criterion. The criterion of rateability is not the individual benefit of the occupier, but the entire profit of the thing occupied (c). Hence, the ground on which a place of Land tax. worship or building for a charitable purpose is erected, is not, as a necessary consequence of that erection, exonerated from a land tax to which it was pre-

⁽a) Vide 3 Geo. 4, c. 33. (b) R. v. Munday & others, 593; R. v. St. Austell, 5 B. & 1 East, 584; 42 Geo. 3, c. A. 693.

viously liable (a); but where held on lease, and no profit is derived from it by any person, beyond the amount of rent reserved, the rent furnishes the measure of the assessment; and if no rent is reserved, or the inheritance is in the trustees, and no profit whatever is derived from it by any person, it is not liable to the tax at all.

Poor rate.

So, if a profit is made of a chapel, or other building for charitable purposes, whether it be annual and fixed, or contingent and varying, as by letting pews, or in any other way; whoever makes that profit, either the trustee or the preacher, may be considered a beneficial occupier, and is rateable to the poor in respect of the thing occupied. And if pews are let by trustees, in whom the property vests, they are deemed to make a profit of the rent, and are rateable for it, even though the expenditure of the trust exceeds its income; the subsequent disposition of the rent being considered altogether a matter of private arrangement (b).

But if a chapel is solely used for charitable and religious purposes, and no pecuniary advantage arises from it to any person, although a part of it be inhabited by a door-keeper, and various other persons, supported out of a voluntary fund, no one can be considered to have a beneficial occupation subject to the poor's rate (c).

⁽a) As to exonerations by statutes, vide 46 Geo. 3, c. 133, s. 2; 49 Geo. 3, c. 67; 38 Geo. 3, c. 5, s. 25, &c. (b) R. v. Agar, 14 East,

^{256;} Jones v. Mansell, Doug.

^{302;} Rowls v. Gells, Cowp. 451; 1 Nol. P. L. 182, 188; and cases there collected, Anon. Bott. 119, Pl. 157.

⁽c) R. v. Woodward, 5 T. R. 79.

It may be observed under this head, that mere nominal trustees are not rateable, because their occupation is neither beneficial to themselves nor to those who might be considered occupiers, if they were not so (a).

And on the same principle, pew-holders (b), it appears; founders of a charity who derive no profit from it (c); and poor inmutes who have no control over the premises they inhabit, are not rateable (d); but where the objects of a charity have such a property therein as may constitute them beneficial occupiers (e), or where there is a beneficial occupier for their benefit, as in the case of trustees of a chapel, the surplus profit of which goes to the preacher, the property is rateable to the poor (f).

Windows in any room of a dwelling house licensed Window according to law, as a chapel for divine worship, and for no other purpose; and hospitals, charity schools, and houses for the reception and relief of poor persons, except the apartments therein which are occupied by the officers or servants of the charity, and which are to be severally assessed as entire dwelling houses, are exempted from the window tax; but they must be stated in the certificate of assessment; and on proof of the several grounds of exemption, may be discharged by the commissioners (g).

(a) R. v. St. Bart. Hosp. 4 Burr. 2435; R.v. St. Luke's, 2 Burr. 1053. and St. Luke's Hosp. supra; R. v. Woodward, supra; Tracey v. Talbot, Salk, 531.

⁽b) Ibid. (c) R. v. Agar, supra; R. v. Waldo. Cald. 358.

⁽d) R. v. St. Bart. Hosp.

⁽e) R. v. Catt, 6 T. R. 332. (f) R. v. Agar, supra. (g) 43 Geo. 3, c. 161, Sch. (A).

Inhabited house duty.

Charity schools, hospitals, houses for the reception or relief of poor persons, are exempted from the inhabited house duty (a). Chapels used exclusively for divine worship, do not come within this description.

Parochial and ward taxes. The watch, scavenger, lamp, sewer, and other parochial or ward taxes, depend for their applicability to chapels and charitable institutions, on the several statutes and local provisions, under the authority of which they are respectively levied (b): but if they are taxes on the occupier, beneficial occupation, as in the instances before mentioned, will be the criterion of their rateability.

CHAP. IV.

OF THE JURISDICTION OF COURTS OF LAW AND EQUITY.

SEC. I.—Of the Subject generally.

It has been already stated, that the religious worship of Protestant Dissenters; their institutions for the inculcation of doctrine not contrary to law; and their various charities and trusts of a nature not illegal, are now protected by the general jurisprudence of the country (c). It remains to consider, briefly, those cases of exemption or peculiarity, by which the laws comprised in this division of the Summary are distinguished.

⁽a) Ibid, Sch. (B). Geo. 2, c. 22, &c. (b) 7 Ann. c. 9, 10; 10 (c) Vide supra, pp. 18, 21.

Sec. II.—Of the Charities and Trusts of Protestant Dissenters.

The ordinary rules of jurisprudence which for the How far most part govern these charities and trusts equally charities with others, do not form the subject of inquiry. It and trusts needs only be observed, that the legal property in subject to ordinary chapels and charities among Protestant Dissenters, rules. is usually vested in trustees, by deeds of trust; that this property is modified and adapted, so far as consists with its intrinsic nature and quality, to the convenience of the respective communities to which it belongs; and that, in the absence of all provision on the subject, usage is sometimes permitted to regulate these trusts and charities, even in contradiction to the principles of public policy.

Trusts and charities so modelled, become, like all others, creatures of equity, and are subject to the control of the court of Chancery. Much of the general law respecting these, and other topics included in this chapter, may be found in the text books, under the heads—Of Trusts; Endowments; Byelaws; the Visitorial Power; the distinction of Appointments and Devises; the operation of the Statute of Mortmain; Validity of the Gift, but Nullity of the Use; changing the Use to purposes eodem genere: Uncertainty of Devises and Appointments; of the Doctrine of cypres; Misemployment; Trustees; Surplus Rents; Commission; Inquisition; Decree; Exceptions; and other titles enumerated in a preceding chapter (a).

Of the cases of exemption or peculiarity which

(a) Vide supra, p. 76, n. (b) K 2 require more specific mention, those particularly relating to ministers and schools have been already discussed (b). The cases which follow, are of a similar description.

Grant to chapels, a charitable use.

A grant for the purpose of supporting a chapel for public worship among Protestant Dissenters, is for a charitable use within the meaning of the Statute of Mortmain, 9 Geo. II., c. 36, s. 1 (a); and this statute has always been construed liberally (b).

Hence, the owner of land having, at his own expense, built a chapel, which was used for the purpose of public worship, and the congregation having subscribed a sum of money for the purpose of enlarging and improving it; he, in consideration that the money so subscribed should be expended for that purpose, demised the premises by lease for 23 years. reserving a pepper-corn rent during his life, and 101. per annum after his death. A declaration of trust. also, having been afterwards declared by some of the lessees, declaring they would hold the premises in trust for the congregation assembling there. and that in case public worship should be discontinued, they would assign the premises for civil purposes:-It was held, that this conveyance was for the benefit of a charitable use, and therefore void; that, neither the sum agreed to be expended on the premises, nor the rent reserved at the death of the lessor, was a full consideration for the lease, within the meaning of the second section of the sta-

And therefore void.

⁽a) Vide supra, pp. 79, 87. (b) Doe dem. Thomson v. Pitcher, 2 Marsh. 61; 6 Taunt. 359; 3 M. & S. 407.

⁽c) Attorney General v. Graves, Amb. 155; Durour

v. Motteux, 1 Ves. 320; Morrice v. Bishop of Durham, 9 Ves. 406; 10 Ves. 522; Doe dem. Toone v. Copestake, 6 East, 332.

tute; that it is a general principle with respect to deeds, that when a statute makes them void as for charitable or superstitious uses, the proof of their invalidity may be collected, not only from the instrument itself, but also from extraneous circumstances; for if it were not so, the statute might always be evaded: and that a declaration of trust executed by some of the lessees, is evidence against all, of the purpose for which the lease was granted (a).

So a legacy to be applied towards the discharge Other cases of a mortgage on a Dissenting chapel; and a be-void under the Statute quest to enable trustees to complete a contract for of Mortthe purchase of land (b); a conveyance of a meet-main. ing-house and burial ground, in trust to permit a society of Quakers who then held them, to continue to use them so long as they paid certain rent, and kept the same in repair; and also to permit the society to take part of a farm to build a new meetinghouse, if necessary (c); and a trust by will, for building a chapel, where it may appear to executors to be most wanted; if any surplus not exceeding a certain sum, to go to the support of a faithful Gospel minister; and if any further surplus, to go to such charitable uses as the executors shall think proper (d); are respectively void. In the last case, the whole trust was avoided, the personal fund being dependent on, and auxiliary to, a void devise.

But a devise to trustees, of a reversion to be ap- When not plied by them and their successors, and the officiating void under the Statute.

⁽a) Doe dem. Welward and others v. Hawthorn, 2 B. & A.

⁽b) Corbyn v. French, H. 1779. 4 Ves. 418.

⁽c) Doe dem. Thomson v. Pitcher, supra.

⁽d) Chapman v. Brown, T. 1801; 6 Ves. 404; vide etiam, 2 Brown, 428; 3 Ves. 141,

ministers for the time being, of a Methodist congregation, as they shall from time to time think fit to apply the same, is not a devise to a charitable use within the statute; the trustees, therefore, are entitled to recover at law, however the court of Chancery may afterwards direct the application of the trust fund (a).

Nor is a legacy for the increase and improvement of Christian knowledge, a legacy within the statute; but the court of Chancery will see to its application (b). And although a legacy given to Protestant Dissenters, to pay off a mortgage on their chapel, is void; yet if they contrive by other means to pay it off, it seems the money may be employed in repairing the chapel, but it can be applied to no other purpose (c).

Object of Statute of Mortmain. The object of the Statute of Mortmain being to prevent a reservation under colour of a charitable use, of some substantial benefit to the donor himself; it is held, that a grant on condition to repair, and if need be, to rebuild a vault and tomb, and permit the same to be used as a family vault, by the grantor and family, and in default thereof, then over to the other trustees, is not within the meaning of the statute, being only in furtherance and execution of the trust; that as far as concerns the grantor's own interment, it is not a charitable use, but inasmuch as it is for the family, it may be so considered: that a grant which, by the terms thereof, takes effect in possession, satisfies the statute, though, in fact,

⁽a) Doe dem. Toone v. Stepney, T. 1804; 10 Ves. 22.
Copetstake, supra, p. 102.
(b) Attorney General v.

the grantor continued to receive the rents and profits until death, unless it were by virtue of a secret reservation or trust to that effect; and that if a deed contains several limitations, of which some only are within the statute, the included limitations alone are avoided (a).

Sec. III.—Of Trustees and Congregations.

THE powers of trustees and congregations relative Their to the appointment and removal of ministers, have powers with been already incidentally considered (b). ministers.

The extent of those powers, with regard to the With trust itself, is partially defined by the following de-regard to the trust. cisions:

Where a trust is created for religious worship, As to and it appears to have been the founder's intention doctrine. (although not expressed), that a particular doctrine should be preached, it is not in the power of the trustees, or of the congregation, to alter the design of the institution (c).

So where a fund is raised, by subscriptions or otherwise, to furnish a consideration for the purchase of property to be devoted to religious worship, the property so purchased must be applied to those purposes, according to the principles of the individuals who so acquired that property; provided they are not contrary to law: and the courts will not permit individuals constituting even a majority of these bodies, at a future time, unless these individuals have a right by contract to do it, to convert the

(b) Vide supra, pp. 77, 78.

(c) Attorney General v. Pearson and others, 3 Meriv. 400.

⁽a) Doe dem. Thomson v. Pitcher, supra, p. 102.

property so acquired to any other than the original purposes; but those who have contributed towards such fund, have a continued right to exercise a power consistent with the original contract, and the principles of toleration (a).

A clause enabling trustees to make orders or matters relating to a meeting-house, cannot be so construed as to authorise them to convert the objects of charity, by introducing a new form of worship, and new doctrines (b).

As to uses in general.

Nor can any agreement between the donees of a charity, alter or direct it to other uses than those expressly limited by the donor (c).

A trust for the benefit of a charity is broken by

pulling down a chapel, selling the materials, and converting the burial ground to other purposes; and on petition, under the 52 Geo, III., c. 101, s. 12, the court of Chancery will direct a conveyance to new trustees(d); yet sometimes the Court will permit a variation from the terms of the original trust, when its object is substantially preserved, as to build a new chapel, where the trust was for repairing (e). As to elect- With respect to the powers of trustees for the perpetuation of the trust, it has been decided, that a provision in case of the desertion and removal of any of the trustees, that the remaining trustees may, within a limited time, elect new trustees in the room

ing new trustees.

> of the trustees so deserting, does not extend to disable (a) Attorney General v. 1 Vern. 42. Fletcher and others, M. S. (d) Ex-pts. Greenhouse, M. (b) Attorney General v. Pearson, pp. 411, 412. 1815. 1 Madd. 92. (e) 1 Anst. 116.

(c) Man v. Ballett, E. 1682,

a trustee having so deserted from acting again, where no successor has, in the meantime, been appointed; nor to the case of a trustee who has left the object of his trust, on account of its having been converted against his approbation, to purposes distinct from the intent of the founder (a).

If a body of Dissenters in this country think pro-Of congreper to connect themselves with the Associated Synod in Scotland, and the contract is not illegal, it is not material whether the Synod is recognised by the Scotch law; and provided the Synod think proper to accede to the connexion, the other party are bound by the contract (b).

Sec. IV.—Of the Jurisdiction of the Court of Chancery.

INSTITUTIONS of the nature described in preceding sections of this chapter, being considered charities (c), the court of Chancery, it has been observed, exercises a protective and beneficial jurisdiction over them; some of the peculiar modes and occasions of its interposition may be collected from the following decisions.

It is the duty of the Court, on regular application, How far the to give to Dissenting bodies the full benefit of the Court will interfere. laws of the country, as they apply to their disciplins and conduct, so far as the same are not contrary to

⁽a) Attorney General v. (c) Attorney General v.
Pearson, 412. Lord Dudley, 15 Ves. 85;
(b) Attorney General v.
Cowp. 146.
Fletcher and others, M. S.

law (a); but in this respect, a distinction is to be drawn between the act of worship which is entitled to toleration, and the inculcation of worship which may, nevertheless, be not entitled to the assistance of the Court (b).

Observing this distinction, the Court will administer every authorised species of trust for the benefit of Dissenting congregations; and will settle disputes, either among the trustees themselves, or between them and the congregation. It will also interpose to prevent an improper person from receiving pew rents, and appoint a receiver during the suit; but it will not, it seems, interfere with a voluntary sub-The question of religious belief is scription (c). considered by the Court as irrelevant, except when called on to execute a trust: but if the parties applying make out that a particular mode of belief was intended by the founder of the trust, they must go on to shew that the meeting-house was for such purposes as the law can sanction, in order to entitle themselves to the assistance of the Court(d).

Not bound by strict rules in cases of charity. In cases of charity, the Court is not bound by strict rules of practice, as with respect to granting an

(a) Attorney General v. Fletcher and others, M. S.; Attorney General v. Pearson and others, 397.

(b) 3 Meriv, 393; Amb. 228; 7 Ves. jun. 76. The preamble to the 9 & 10 W. 3, c. 32, seems to include Unitanism among the offences at common-law thereby de-

nounced; and if so, its peculiar form of worship and doctrine are not entitled to the assistance of the court of Chancery: this, however, is extremely doubtful.

(c) Attorney General v. Fowler, 15 Ves. 88. Ex-pte. Pearson, 6 Price, 213,

(d) 3 Meriv. 415.

injunction, whether common or special, to stay proceedings at law; but will act according to what the justice of the case seems to require, so as to save the parties unnecessary expense (a).

In carrying charitable uses into execution, the Court has adopted the following modes of construction, in cases in which the intention of the founder is obscurely expressed.

Where a trust is created for religious worship, and Mode of it cannot be discovered from the deed creating the construing trusts. trust what was the nature of the religious worship intended by it, it must be implied from the usage of the congregation; but where the nature of the origizal institution can be ascertained, it must be looked to as the sole guide for the decision of the Court (b). And on a clause for the appointment of new trustees, in case any of the old ones should change or become of a different religion from the congregation. if any question arises whether a trustee has been properly removed, it becomes necessary for the Court to inquire what was the religion of the society, not to animadvert on it, but ascertain whether the charge is substantiated (c).

If land or money be properly given for maintaining "the worship of God," without more, the Court will execute the trust in favour of the Established religion. If it is clearly expressed, that the purpose is that of maintaining Dissenting doctrines, so long as they are not contrary to law, the Court will execute the trust accordingly; and where the in-

⁽a) 3 Meriv. 396. (b) Ibid, 400.

⁽e) Ibid, 413.

tention clearly appears aliunde, though not expressed in the instrument creating the trust, the Court will also carry the manifest design of the founder into execution, so far as it is consistent with law. if the intention be not clear in the deed, the Court has no other means of carrying it into execution, than by collecting the intention from inference and fair presumption (a). The inference from a clause in a deed relating to the possible future prohibition of the worship thereby intended to be established is, that the intended worship was not, at the time of the execution of the deed, excepted out of the benefit of the Toleration Act(b): and where two parties seeking the benefit of a trust for charitable purposes, differ as to the mode of carrying it into effect, one party being in support of the original system, the other for some proposed alterations to be made in it; the leaning of the Court must be in favour of the former, however useful it may judge the proposed alterations to be (c).

Referred to Master, in these and similar cases. In these and similar cases, the Court will probably refer it to the Master, to inquire the facts of the case: as for instance, in whom the legal estate is vested; the particular object (with respect to worship and doctrine), for which the trust was created; the usage of Protestant Dissenters as to the election of ministers, and the duration of their office; and whether any agreement or understanding relative thereto subsists between the parties (d). And as to the duration of the office of ministers among Protestant

⁽a) 3 Meriv. 409, 410.

⁽b) Ibid, 411.

⁽c) Ibid, 419.

⁽d) Ibid, 420.

Dissenters, as already observed in a preceding chapter, the principle of public policy does not apply (a).

In cases of surplus revenue, the Court will apply In cases of surplus it according to the doctrine of cy pres: as on a be-revenue. quest made before the stat. 9 Geo. II., c. 36, to the congregation of Presbyterians to which the testator belonged, for placing out as apprentices, two poor boys of such as were members of the congregation. and living in a certain parish; the fund becoming more than sufficient, the Court applied the surplus, first, to place out sons of members within that parish; -secondly, sons of members in other parishes: thirdly, daughters of members in like manner;and lastly, sons of Presbyterians generally, previous to building a school and other purposes; and sons of persons of the Established religion within the parish, were, on a proposal, rejected (b). And on a similar principle, as already noticed (c), the Court will, under peculiar circumstances, permit a variation in the mode of executing a trust.

Where livery of seisin is not given according to As to livery the terms of a joint power contained in a feoffment, of seisin. and one of the parties to whom power is given to deliver seisin refuses to execute it, it is doubtful whether the Court can give authority to deliver seisin as to part only (d).

⁽a) Vide supra, p. 79. (b) Attorney General v. Wansey, T. 1808. 15 Ves. 231.

⁽c) Vide supra, p. 106. (d) 3 Meriv. 416.

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APPENDIX

(A)

No. 1.

Statute 1 W. & M., s. 1, c. 18, usually called THE TOLERATION ACT.

A. D. 1688.

An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws.

"Forasmuch as some ease to scrupulous con-

"sciences, in the exercise of religion, may be an "effectual means to unite their Majesties' Protestant

"subjects, in interest and affection:"

II. Be it enacted by the King's and Queen's most The several excellent Majesties, by and with the advice and consent of the lords spiritual and temporal, and the Dissenters. commons, in this present parliament assembled, and by the authority of the same, that neither the statute made in the three and twentieth year of the reign of the late Queen Elizabeth, intituled, An Act to retain 23 Eliz.c.1. the Queen's Majesty's Subjects in their due Obedience,

nor the statute made in the twenty-ninth year of 29 Eliz. c. 6 the said queen, intituled, An Act for the more speedy and due execution of certain branches of the statute made in the three and twentieth year of the Queen's Majesty's reign, viz. the aforesaid act, nor that branch or clause of a statute made in the first year 1 Eliz. c. 2, of the reign of the said queen, intituled, An Act s. 14. for the Uniformity of Common Prayer, and Service in the Church, and Administration of the Sacraments; whereby all persons, having no lawful or reasonable excuse to be absent are required to resort to their parish church or chapel, or some usual place where the common prayer shall be used. upon pain of punishment by the censures of the church, and also upon pain that every person so offending shall forfeit for every such offence, twelvepence: nor the statute made in the third year of the reign of the late king James the First, intituled, 3 Jac. 1, c. An Act for the better thiscovering and repressing Popish Recusants; nor that other statute made 3 Jac. 1, c. in the same year, intituled, An Act to prevent and avoid Dangers which may grow by Popish Recusants; nor any other law or statute of this realm made against Papists or Popish recusants, except the statute made in the five and twentieth year of king Charles the second, intituled, An Act for Exception 25 Car. 2, preventing Dangers which may happen from Popish st. 2. Recusants; and except also the statute made in the thirtieth year of the said king Charles the 30 Car. 2, second, intituled, An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of

Parliament; shall be construed to extend to any person or persons dissenting from the church of England, that shall take the oaths mentioned in a statute made this present parliament, intituled. An Act for removing and preventing all Questions and Supra, c. 1. Disputes concerning the assembling and sitting of this present Parliament: and shall make and subscribe the declaration mentioned in a statute made in the thirtieth year of the reign of king Charles the second. intituled, An Act to prevent Papists from sitting 30 Car. 2, in either House of Parliament; which oaths and declaration the justices of peace, at the general Taking sessions of the peace, to be held for the county or to be regisplace where such person shall live, are hereby required tered. to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register: and likewise none of the persons aforesaid shall give or pay, as any Fee for refee or reward, to any officer or officers, belonging to certificate. the court aforesaid, above the sum of six-pence, nor that more than once for his or their entry of his taking the said oaths, and making and subscribing the said declaration: nor above the further sum of sixpence, for any certificate of the same, to be made out and signed by the officer or officers of the said court.

III. And be it further enacted, by the authority afore- Persons said, that all and every person and persons already &c. taking convicted, or prosecuted in order to conviction, of the oaths, recusancy, by indictment, information, action of debt, &c. shall be or otherwise, grounded upon the aforesaid statutes,

or any of them, that shall take the said oaths, mentioned in the said statute made this present parliament, and make and subscribe the declaration aforesaid, in the court of Exchequer, or assizes, or general or quarter sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures, judgments, and executions incurred by force of any of the aforesaid statutes, without any composition, fee, or further charge whatsoever.

IV. And be it further enacted, by the authority aforesaid, that all and every person and persons that shall, as aforesaid, take the said oaths, and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties, or forfeitures, mentioned in an act made in the five-and-thirtieth year of the reign 35 Eliz.c.1. of the late queen Elizabeth, intituled, An Act to

35 Eliz. c. 1. of the late queen Elizabeth, intituled, An Act to retain the Queen's Majesty's Subjects in their due Obedience; nor in an act made in the two-and-twentieth year of the reign of the late king Charles 22 Car. 2, the second, intituled, An Act to prevent and suppress

22 Car. 2, the second, intituled, An Act to prevent and suppress c. 1. seditious Conventicles; nor shall any of the said Ecclesiasti. persons be prosecuted in any Ecclesiastical court. for

cal court. or by reason of their non-conforming to the church

of England.

Private meetings excluded. V. Provided always, and be it enacted by the authority aforesaid, that if any assembly of persons dissenting from the church of *England*, shall be had in any place for religious worship, with the doors

locked, barred, or bolted, during any time of such meeting together, all and every person or persons that shall come to and be at such meeting shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this act for such their meeting, notwithstanding his taking the oaths, and his making and subscribing the declaration aforesaid.

VI. Provided always, that nothing herein contained Tithes shall be construed to exempt any of the persons saved. aforesaid from paying the tithes or other parochial duties, or any other duties to the church or minister. nor from any prosecution in any Ecclesiastical court, or elsewhere, for the same.

VII. And be it further enacted, by the authority Officers aforesaid, that if any person dissenting from the oaths, &c., church of England, as aforesaid, shall hereafter be allowed to chosen, or otherwise appointed to bear the office of tv. high constable, or petit constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office, or employment, by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf. always the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.

Persons in orders, how exempted from.

VIII. And be it further enacted, by the authority aforesaid, that no person dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of Dissenting Protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter sessions of the peace to be held for the county, town, parts, or division, where such person lives, which court is hereby empowered to administer the same; and shall also declare his approbation of, and subscribe the articles of religion mentioned in the statute 13 Eliz. c. made in the thirteenth year of the reign of the late

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queen Elizabeth, except the thirty-fourth, thirtyfifth, and thirty-sixth, and these words of the twentieth article, viz. (the Church hath Power to decree Rites or Ceremonies, and Authority in Controversies of Faith, and yet) shall be liable to any of the pains or penalties mentioned in an act made in the seventeenth

17 Car. 2. year of the reign of king Charles the second, intituled, c. 2. An Act for restraining Non-conformists from inhabiting in Corporations: nor the penalties mentioned

22 Car. 2, in the aforesaid act made in the two-and-twentieth c. 1. year of his said late Majesty's reign, for or by reason of such persons preaching at any meeting for the

exercise of religion; nor to the penalty of one hundred pounds mentioned in an act, made in the thirteenth and fourteenth of king Charles the second,

13 & 14 Car. 2. c. 4. intituled, An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies; and for establishing

the form of making, ordaining, and consecrating of Bishops, Priests and Deacons, in the Church of England, for officiating in any congregation for the exercise of religion permitted and allowed by this act. [See 19 Geo. III. c. 44].

IX. Provided always, that the making and sub-Taking the scribing the said declaration, and the taking the said oaths, &c., to be regisoaths, and making the declaration of approbation, and subscription to the said articles, in manner as aforesaid, by every respective person or persons hereinbefore-mentioned, at such general or quarter sessions of the peace, as aforesaid, shall be then and there entered of record in the said court, for which six-pence shall be paid to the clerk of the peace, and no more. Provided that such Meeting person shall not at any time preach in any place, unlocked. but with the doors not locked, barred, or bolted, as aforesaid.

X. And whereas some Dissenting Protestants Baptists. scruple the baptizing of infants, be it enacted by the authority aforesaid, that every person in pretended holy orders, or pretending to holy orders, or preacher or teacher, that shall subscribe the aforesaid articles of religion, except as before excepted, and also except part of the seven-and-twentieth article touching infant baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits, and advantages, which any other Dissenting minister, as aforesaid, might have or enjoy by virtue of this act.

Teachers exempt from offices.

XI. And be it further enacted, by the authority aforesaid, that every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid articles of the church of England, as are required by this act, in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred of any shire, city, town, parish, division or wapentake. XII. And be it further enacted, by the authority

Justices of peace may aforesaid, that every justice of the peace, may at any tender the oaths, &c.

refusing.

time hereafter, require any person that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said oaths or declaration of fidelity herein-after mentioned, in case such person scruples the taking of Penalty for an oath: and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or mainprize, and to certify the name of such person to the next general or quarter sessions of the peace to be held for that county, city, town, part, or division, where such person then resides, and if such person so committed, shall upon a second tender at the general or quarter sessions, refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded, and

he shall be taken thenceforth, to all intents and

Second tender refused: penalty. purposes, for a Popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

XIII. 'And whereas there are certain other persons, Quakers, 'Dissenters from the church of England, who scruple empted.' the taking of any oath:' Be it enacted by the authority aforesaid, that every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following, viz.

'I, A. B., do sincerely promise and solemnly declare Declaration before God and the world, that I will be true and faithful to king William and queen Mary. And I do solemnly profess and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed for murthered by their Subjects, or any other what-soever; and I do declare that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual within this realm.'

And shall subscribe a profession of their Christian belief in these words:

'I, A. B., profess faith in God the Father, and in Profession.

'Jesus Christ his eternal Son, the true God, and in

'the Holy Spirit, One God blessed for evermore: and

'do acknowledge the Holy Scriptures of the Old

'and New Testament, to be given by divine inspira
'tion.'

Persons subscribing exempt from. Which declaration and subscription shall be made and entered of record, at the general quarter sessions of the peace for the county, city, or place, where every such person shall then reside; and every such person that shall make and subscribe the two declarations and professions aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the aforementioned statutes made against Popish recusants, or Protestant non-conformists, and also from the penalties of an act made in the fifth year of the reign of the late queen Elizabeth, intituled, An Act for the Assurance of the Queen's Royal* Power over all Estates and

5 Eliz. c. 1.

Elizabeth, intituled, An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions; for or by reason of such persons not taking or refusing to take the oath mentioned in the said act; and also from the penalties of an act, made in the thirteenth and fourteenth

13 & 14 of an act, made in the thirteenth and fourteenth Car. 2, c. 1. years of the reign of king Charles the Second, inti-

tuled, An Act for preventing Mischiefs that may arise by certain Persons called Quakers (a) refusing to take lawful Oaths: and enjoy all other the benefits, privileges, and advantages, under the like limitations, provisos, and conditions, which any other Dissenters shall or ought to enjoy by virtue of this act. [Al-

(a) [Sic. Rot].

tered as to Quakers, 8 Geo. I., c. 6, s. 1, et vide 4 Geo. III., c. 2, s. 60.

Refusing paths.

XIV. Provided always, and be it enacted by the authority aforesaid, that in case any person shall refuse to take the said oaths when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make

and subscribe the two declarations aforesaid, though required thereunto, either before any justice of the peace, or at the general or quarter sessions, before or after any conviction of Popish recusancy, as aforesaid, unless such person can, within thirty-one days, after such tender of the declarations to him, produce How two sufficient Protestant witnesses, to testify upon purged, oath that they believe him to be a Protestant refusal. Dissenter, or a certificate under the hands of four Protestants who are conformable to the church of England, or have taken the oaths, and subscribed the declaration above mentioned, and shall also produce a certificate under the hands and seals of six or more sufficient men of the congregation to which he belongs, owning him for one of them.

XV. Provided also, and be it enacted by the authority aforesaid, that until such certificate, under the hands of six of his congregation, as aforesaid, be produced, and two Protestant witnesses come to attest his being a Protestant Dissenter, or a certificate under the hands of four Protestants as aforesaid, be produced, the justice of the peace shall, and hereby is required, to take a recognizance, with two sureties, in the penal sum of fifty pounds. to be levied of his goods and chattels, lands and tenements, to the use of the King's and Queen's Majesties, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses aforesaid.

XVI. Provided always, and it is the true intent Laws for and meaning of this act, that all the laws made and divine service in force.

provided for the frequenting of divine service on the Lord's-day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship, allowed or permitted by this act.

Who shall not derive benefit from this act.

XVII. Provided always, and be it further enacted by the authority aforesaid, that neither this act, nor any clause, article, or thing herein contained, shall extend, or be construed to extend, to give any ease, benefit, or advantage to any Papist or Popish recusant whatsoever; or any person that shall deny in his preaching or writing, the doctrine of the blessed Trinity, as it is declared in the aforesaid Articles of Religion.

Disturbers of religious worship, how punished.

XVIII. Provided always, and be it enacted by the authority aforesaid, that if any person or persons, at any time or times, after the tenth day of June, do and shall willingly and of purpose, maliciously or contemptuously, come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same. or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of fifty pounds; and, in default of such sureties, shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and penalty of twenty pounds, to the use of the King's

Penalty.

and Queen's Majesties, their heirs and successors. [Vide 1 Geo. I., st. 2, c. 5, s. 4].

XIX. Provided always, that no congregation or Place for assembly for religious worship shall be permitted or worship to allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, city, or place, in which such meeting shall be held, and registered in the said bishop's or archdeacon's court respectively, or recorded at the said general or quarter sessions; the register or clerk of the peace whereof respectively. is hereby required to register the same, and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee nor reward taken than the sum of sixpence. [This act confirmed 10 Ann, c. 2, s. 7; and to be deemed a public act, 19 Geo. III., c. 44, s. 4].

(A).

No. 2.

Statute 19 Geo. III., c. 44. A. D. 1779.

An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters.

·1 W.& M. 'WHEREAS, by an act made in the first year of the s. 1, c. 18, reign of king William and queen Mary, intituled, ' An Act for exempting their Majesties' Protestant ' Subjects, di senting from the Church of England, ' from the Penalties of certain Laws, persons dis-' senting from the church of England, in holy orders. or pretended holy orders, or pretending to holy orders, and preachers or teachers of any congregation of Dissenting Protestants, are required, in order to ' be entitled to certain exemptions, benefits, privileges. ' and advantages, to declare their approbation of, and ' to subscribe, the Articles of Religion mentioned in the statute made in the thirteenth year of the reign ' of queen Elizabeth (except as in the said act, made ' in the first year of the reign of king William and 'queen Mary, is excepted). And whereas many ' such persons scruple to declare their approbation of, and to subscribe the said articles not excepted 'as aforesaid.' For giving ease to such scrupulous persons in the exercise of religion, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent majesty, by

and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every person dissenting from the church Protestant Dissenting of England, in holy orders, or pretended holy orders, ministers or pretending to holy orders, being a preacher or taking oaths teacher of any congregation of Dissenting Pro-scribing detestants, who, if he scruple to declare and subscribe claration. as aforesaid, shall take the oaths and make and subscribe the declaration against Popery required by the said act, in the first year of the reign of king William and queen Mary, to be taken, made, and subscribed by Protestant Dissenting ministers, and shall also make and subscribe a declaration in the words following: videlicet.

'I. A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and a Pro-'testant, and as such, that I believe that the scrip-'tures of the Old and New Testament, as commonly 'received among Protestant churches, do contain 'the revealed will of God; and that I do receive the 'same as the rule of my doctrine and practice,'-shall be, and every such person is hereby declared Entitled to be, entitled to all the exemptions, benefits, pri- to privilevileges, and advantages, granted to Protestant Disc ges of 1 W. & M., s. 1, senting ministers by the said act, made in the c. 18, and 10 first year of the reign of king William and queen Ann, c. 2. Mary: and by an act made in the tenth year of the reign of queen Anne, intituled, An Act for preserving the Protestant Religion, by better securing the Church of England as by Law established; and for confirming the Toleration granted to Protestant

Dissenters, by an Act, intituled, An Act for exempting their Majesties' Protestant Subjects, dissenting from the church of England, from the Penalties of certain Laws; and for supplying the defects thereof; and for the further securing the Protestant succession, by requiring the Practisers of the Law in North Britain to take the Oaths and subscribe the Declaration therein mentioned: and the justices of the peace, at the general sessions of the peace to be holden for the county or place where any Protestant Dissenting minister shall live, are hereby required to tender and administer the said last-mentioned declaration to such minister. upon his offering himself to make and subscribe the same, and thereof to keep a register: and such minister shall not give or pay, as a fee or reward to any officer or officers belonging to the court aforesaid, above the sum of six-pence, for his or their entry of such minister's making and subscribing the said last-mentioned declaration, and taking the oaths, and making and subscribing the declaration against Popery, required by the said act, made in the first year of the reign of king William and queen Mary, to be taken, made, and subscribed by Protestant Dissenting ministers, nor above the sum of six-pence for any certificate thereof, to be made out and signed by the officer or officers of the said court; and every such person qualifying himself as aforesaid, shall be exempted from serving in the militia of

Exempted this kingdom; and shall also be exempted from from serving any imprisonment, or other punishment, by virtue of in militia, an act made in the thirteenth and fourteenth years and from

of the reign of king Charles the Second, intituled, punishment An Act for the Uniformity of public Prayers, and by Act of Uniformity, Administration of Sacraments, and other Rites and &c., 13 & Ceremonies; and for establishing the Form of 14 Car. 2, making, ordaining, and consecrating Bishops, Priests and Deacons, in the Church of England; or by an act made in the fifteenth year of the same reign, 15 Car. 2, intituled, An Act for Relief of such Persons as by c. 6. Sickness, or other Impediment, were disabled from subscribing the declaration in the Act of Uniformity, and Explanation of Part of the said Act; for preaching or officiating in any congregation of Protestant Dissenters for the exercise of religion permitted and allowed by law.

II. And be it further enacted, by the authority Dissenters aforesaid, that no Dissenting minister, nor any allowed to other Protestant dissenting from the church of instruct England, who shall take the aforesaid oaths, and youth. make and subscribe the above-mentioned declaration against Popery, and the declaration hereinbefore mentioned, shall be prosecuted in any court whatsoever, for teaching and instructing youth as a tutor or schoolmaster; any law or statute to the contrary notwithstanding.

III. Provided always, that nothing in this act No Discontained shall extend, or be construed to extend, senter to the enabling of any person dissenting from the tership of church of *England* to obtain or hold the mastership any college, of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of the reign of their late

majesties king William and queen Mary, for the immediate use and benefit of Protestant Dissenters.

1 W. & M. deemed public acts

IV. 'And whereas it hath been doubted whether s. 1, c. 18, the said act, made in the first year of the reign of and this act 'king William and queen Mary, be a public or pri-' vate act;' be it enacted and declared, that the said act. and also this present act. shall be adjudged, deemed, and taken to be public acts; and shall be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without specially pleading them, or either of them.

(A).

No. 3.

Statute 52 Geo. III., c. 155.

29th July, 1812.

An Act to repeal certain Acts, and amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein.

- 'WHEREAS it is expedient that certain acts of
- ' parliament, made in the reign of his late majesty ' king Charles the Second, relating to nonconform-
- ists and conventicles, and refusing to take oaths,
- ' should be repealed, and that the laws relating to
- ' certain congregations and assemblies for religious
- worship, and persons teaching, preaching, or offi-
- ciating therein, and resorting thereto, should be

'amended:' Be it therefore enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, an act of parliament made in the session of parliament held in the thir- 13 & 14 Car. teenth and fourteenth years of his late Majesty king 2, c. 1. Charles the Second, intituled, An Act for preventing the Mischiefs and Dangers that may arise, by certain Persons called Quakers, and others, refusing to take lawful Oaths; and another act of parliament, made in the seventeenth year of the reign of his late 17 Car. 2. majesty king Charles the Second, intituled An Act c. 2. for restraining Nonconformists from inhabiting in Corporations; and another act of parliament, made in the twenty-second year of the reign of the late 22 Car. 2. king Charles the Second, intituled An Act to pre- c. 1, repealvent and suppress seditious Conventicles; shall be and the same are hereby repealed.

II. And be it further enacted, that from and after Places of the passing of this act, no congregation or assembly religious worship for religious worship of Protestants (at which there certified and shall be present more than twenty persons besides the immediate family and servants of the person in whose house, or upon whose premises such meeting, congregation, or assembly, shall be had), shall be permitted or allowed, unless and until the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of parliament relating to registering places of re-

ligious worship, shall have been, or shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place, in which such meeting shall be held; and all places of meeting which shall be so certified to the bishop's or archdeacon's court, shall be returned by such court once in each year, to the quarter sessions of the county, riding, division, city, town, or place; and all places of meeting which shall be so certified to the quarter sessions of the peace, shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions; the registrar or clerk of the peace whereof, respectively, is hereby required to register and record the same; and the bishop, or registrar, or clerk of the peace, to whom any such place of meeting shall be Certificate. certified under this act, shall give a certificate thereof, to such person or persons as shall request or demand the same, for which there shall be no greater fee nor reward taken, than two shillings and sixpence; and every person who shall knowingly permit or suffer any such congregation or assembly, as aforesaid, to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit for every time any such congregation or assembly shall meet contrary to the provisions of this act, a sum not exceeding twenty pounds, nor

Fee.

Penalty.

less than twenty shillings, at the discretion of the justices who shall convict for such offence.

III. Provided always, and be it further enacted, Teaching, that every person who shall teach or preach in any consent of congregation or assembly as aforesaid, in any place, occupiers. without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding thirty pounds, nor less than forty shillings, at the Penalty. discretion of the justices who shall convict for such offence.

IV. And be it further enacted, that from and after Preachers the passing of this act, every person who shall teach in, and persons resortor preach at, or officiate in, or shall resort to any ing to relicongregation or congregations, assembly or assemblies, for religious worship of Protestants, whose certified place of meeting shall be duly certified according to under act, exempt the provisions of this act, or any other act or acts of from penal-parliament relating to the certifying and registering & M. s. 1, of places of religious worship, shall be exempt from c. 18. all such pains and penalties under any act or acts of parliament relating to religious worship, as any person who shall have taken the oaths, and made the declaration prescribed by, or mentioned in an act, made in the first year of the reign of king William and queen Mary, intituled, An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws; or any act amending the said act, is by law exempt, as fully and effectually, as if all such pains and penalties, and the several acts enforcing the same, were recited in this act, and such exemptions

as aferesaid were severally and separately enacted in relation thereto.

V. Provided always, and be it further enacted,

Oaths, &c., taken by preachers, &c., when required by magistrate.

that every person not having taken the oaths, and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required, by any one justice of the peace, by any writing under his hand or signed by him, take and make and subscribe, in the presence of such justice of the peace, the oaths and declarations specified and contained in an act, passed in the nineteenth year of the reign of his majesty, King

19 Geo. 3, George the Third, intituled, An Act for the further c. 44. Relief of Protestant Dissenting Ministers and Schoolmasters; and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take and make and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious

Penalty.

worship, until he shall have taken such oaths, and made such declaration as aforesaid, on pain of forfeiting, for every time he shall so teach or preach, any sum not exceeding ten pounds nor less than ten shillings, at the discretion of the justice convicting for such offence.

Not com-

VI. Provided always, and be it further enacted, pelled to go that no person shall be required by any justice of the five miles. peace to go to any greater distance than five miles

from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid.

VII. And be it further enacted, that it shall be Who may lawful for any of his Majesty's Protestant subjects to require of appear before any one justice of the peace, and to peace, &c., produce to such justice of the peace a printed or to adminis-produce to such justice of the peace a printed or ter oaths, written copy of the said oaths and declaration, and &c., under to require such justice to administer such oaths and act. to tender such declaration to be made, taken, and subscribed by such person; and thereupon it shall be lawful for such justice, and he is hereby authorised and required to administer such oaths and to tender such declaration to the person requiring to take and make and subscribe the same: and such person shall take and make and subscribe such oaths and declaration in the presence of such justice accordingly; and such justice shall attest the same to be sworn before him, and shall transmit or deliver the same to the clerk of the peace for the county, riding, division, city, town, or place for which he shall act as such justice of the peace, before or at the next general or quarter sessions of the peace for such county, riding, division, city, town or place.

VIII. And be it further enacted, that every justice Justices to of the peace before whom any person shall make and give certificate of oath. take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice, in the form following: (that is to say),

'I, A. B., one of his Majesty's justices of the peace

for the county, [riding, division, city, or town, or place, as the case may be] of

place, as the case may be] of
'do hereby certify, that C. D., of, &c. [describing the
'christian and surname, and place of abode of the
'party] did this day appear before me, and did make
'and take and subscribe the several oaths and declara'tion specified in an act, made in the fifty-second
'year of the reign of King George the Third, intituled
'[set forth the title of this Act]. Witness my hand,
'this day of one thousand eight

hundred and

Fee.

And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party taking and making the same, such justice shall be entitled to demand and have a fee of two shillings and sixpence, and no more: and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act.

Certificate evidence.

Teachers
taking
oaths, &c.,
exempt
from offices,
and from
militia.

IX. And be it further enacted, that every person who shall teach or preach, in any such congregation or assembly, or congregations or assemblies as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow or engage in any trade or business, or other profession, occupation or employment, for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of the peace, of his having taken and made and subscribed the oaths and declaration aforesaid, shall be exempt from the civil services and offices specified in the said recited act passed in the

first year of king William and queen Mary, and from 1 W. & M. being balloted to serve, and from serving in the s. 1, c. 18. militia or local militia of any county, town, parish, or place in any part of the United Kingdom.

X. And be it further enacted, that every person False certiwho shall produce any false or untrue certificate or ficate. paper, as and for a true certificate of his having made and taken the oaths, and subscribed the declaration. by this act required, for the purpose of claiming any exemption from civil or military duties as aforesaid, under the provisions of this or any other act or acts of parliament, shall forfeit for every Penalty. such offence, the sum of fifty pounds; which penalty may be recovered, by and to the use of any person who will sue for the same, by any action of debt. bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or the courts of great sessions in Wales, or the courts of the Counties Palatine of Chester, Lancaster, and Durham, (as the case shall require); wherein no essoin, privilege, protection, or wager of law, or more than one imparlance shall be allowed.

XI. And be it further enacted, that no meeting, Doors of reassembly, or congregation of persons for religious semblies worship, shall be had in any place with the door not bolted locked, bolted, or barred, or otherwise fastened. so or barred. as to prevent any persons entering therein, during the time of any such meeting, assembly, or congregation; and the person teaching or preaching at such meeting, assembly, or congregation, shall forfeit for every time any such meeting, assembly, or congregation, shall be held with the door locked,

Penalty.

bolted, barred, or otherwise fastened, as aforesaid, any sum not exceeding twenty pounds, nor less than forty shillings, at the discretion of the justices convicting for such offence.

Disturbing religious assemblies.

XII. And be it further enacted, that if any person or persons, at any time after the passing of this act, do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorised by this act, or any former act or acts of parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace, by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of fifty pounds, to answer for such offence, and in default of such sureties, shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and

Recognizance.

Penalty.

penalty of forty pounds.

Provision for ecclesiastical ju-

XIII. Provided always, and be it further enacted, that nothing in this act contained shall affect, or be risdiction of construed to affect the celebration of divine service the church. according to the rites and ceremonies of the United Church of England and Ireland, by ministers of the said church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed, by any archbishop or bishop, or other

person lawfully authorised to consecrate or license the same, or to affect the jurisdiction of the archbishops or bishops, or other persons exercising lawful authority in the church of the United Kingdom, over the said church, according to the rules and discipline of the same, and to the laws and statutes of the realm; but such jurisdiction shall remain and continue, as if this act had not passed.

XIV. Provided also, and be it further enacted, Act not to that nothing in this act contained shall extend, or be Quakers. construed to extend to the people usually called Quakers, nor to any meetings or assemblies for religious worship, held or convened by such persons; or in any manner to alter or repeal, or affect any act, other than and except the acts passed in the reign of king Charles the Second, hereinbefore repealed, relating to the people called Quakers, or relating to any assemblies or meetings for religious worship, held by them.

XV. And be it further enacted, that every person Offenders guilty of any offence, for which any pecuniary pe-convicted before two nalty or forfeiture is imposed by this act, in respect or more of which no special provision is made, shall and may justices. be convicted thereof, by information, upon the oath of any one or more credible witness or witnesses, before any two or more justices of the peace acting in and for the county, riding, city, or place wherein such offence shall be committed; and that all and every the pecuniary penalties or forfeitures which shall be incurred, or become payable for any offence levied by or offences against this act, shall and may be levied distress. by distress, under the hand and seal, or hands and

seals of two justices of the peace, for the county, riding, city, or place, in which any such offence or offences was or were committed, or where the forfeiture or forfeitures was or were incurred, and shall, when levied, be paid, one moiety to the informer, and the other moiety to the poor of the parish in which the offence was committed; and in case of no sufficient distress whereby to levy the penalties, or any or either of them imposed by this act, it shall and may be lawful for any such justices respectively before whom the offender or offenders shall be convicted, to commit such offender to prison, for such time, not exceeding three months, as the said justices in their discretion shall think fit.

Imprisonment.

Appeal after conviction to general or quarter ses-

sions.

XVI. And be it further enacted, that in case any person or persons who shall hereafter be convicted of any of the offences punishable by this act, shall conceive him her or themselves to be aggrieved by such conviction, then and in every such case it shall and may be lawful for such persons or persons respectively, and he, she, or they shall or may appeal to the general or quarter sessions of the peace holden next after such conviction in and for the county, riding, city, or place, giving unto the justices before whom such conviction shall be made. notice in writing within eight days after any such conviction, of his, her, or their intention to prefer such appeal; and the said justices in their said general or quarter sessions shall and may, and they are hereby authorised and empowered to proceed to the hearing and determination of the matter of such appeal, and to make such order therein, and

to award such costs to be paid by and to either party, not exceeding forty shillings, as they in their discretion shall think fit.

XVII. And be it further enacted, that no penalty Limitation of prosecuor forfeiture shall be recoverable under this act, tion. unless the same shall be sued for, or the offence in respect of which the same is imposed is prosecuted before the justices of the peace or quarter sessions, within six months after the offence shall have been committed; and no person who shall suffer any imprisonment for non-payment of any penalty shall thereafter be liable to the payment of such penalty or forfeiture.

XVIII. And be it further enacted, that if any Limitation action or suit shall be brought or commenced of actions. against any person or persons for any thing done in pursuance of this act, that every such action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the county wherein the cause or alleged cause of action shall have accrued and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter General isin evidence on any trial to be had thereupon, and sue. that the same was done in pursuance and by authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time so limited for bringing the same, or shall be brought in any other county, city, or place, that then and in such case the jury shall find for such defendant or defendants; and upon such verdict. or if the plaintiff or plaintiffs, shall become non-

suited, or discontinue his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have and may recover treble Treble costs costs, and have the like remedy for the same, as any defendant or defendants hath or have for costs of suit in other cases by law.

Public act. XIX. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without specially pleading the same.

(A).

No. 4.

Statute 53 GEO. III., cap. 160.

21st July, 1813.

An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties.

'WHEREAS, in the nineteenth year of his present 19 Geo. 3, 'majesty an act was passed, intituled, 'An Act for 'the further relief of Protestant Dissenting Minis'ters and Schoolmasters; and it is expedient to 'enact as herein-after provided.'

1 W. & M. Beit therefore enacted by the King's most excellent s. 1, c. 18, s. 17, repealed. Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority

of the same, that so much of an act passed in the first year of the reign of king William and queen Mary, intituled, An Act for exempting his Majesty's Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws, as provides that that act, or any thing therein contained, should not extend or be construed to extend to give any ease, benefit, or advantage to persons denying the Trinity as therein mentioned, be, and the same is hereby repealed.

II. And be it further enacted, that the provisions of another act passed in the ninth and tenth years of the reign of king William, intituled, An Act for 9 & 10 W. the more effectual suppressing Blasphemy and Pro- 3, c. 32, in faneness, so far as the same relate to persons denying part repealas therein mentioned respecting the Holy Trinity, be and the same are hereby repealed.

III. 'And whereas it is expedient to repeal an Acts passed 'act, passed in the parliament of Scotland, in the in Scotland, against ' first parliament of king Charles the Second, intituled, blasphemy, 'An Act against the Crime of Blasphemy; and repealed. 'another act, passed in the parliament of Scotland. 'in the first parliament of king William, intituled, 'An Act against Blasphemy; which acts respectively 'ordain the punishment of death.' Be it therefore enacted, that the said acts and each of them shall be, and the same are and is hereby repealed.

IV. And be it further enacted, that this act shall Public act. be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded.

(A)

No. 5.

Oaths of Allegiance and Supremacy, settled by 1 Geo. I., st. 2, c. 13. (Alluded to in p. 58).

'I, A. B., do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty king George.—So help me God.'

'I, A. B., do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murthered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.—So help me God (a).'

Oath of Abjuration settled by 6 Geo. III., c. 53. (Alluded to in p. 58).

"I, A. B., do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his Majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales,

(a) The oaths of allegiance and supremacy, imposed by the 1 W. & M. s. 1, c. 1, and required by the 1 W. & M. s. 1, c. 18, s. 2, are mutatis mutan-

dis, with only an immaterial transposition of the words 'jurisdiction' and 'power' in the latter oath, the same with the above.

during the life of the late king James the second, and since his decease, pretended to be, and took upon himself the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging: And I do renounce, refuse, and abjure any allegiance or obedience to any of them. And I do swear that I will bear faith and true allegiance to his Majesty king George, and him will defend, to the numost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his Majesty, and his successors, all treasons and traitorous conspiracies which I shall know to be against him, or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown, against the descendants of the said James, and against all other persons whatsoever; which succession, by an act, intituled, An Act for the further 12 & 13 W. Limitation of the Crown, and better securing the Rights and Li. 3, c. 2. berties of the Subject, is and stands limited to the princess Sophia, Electoress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian .- So help me God.'

Declaration against Transubstantiation required by 25 Car. 2, c. 2, of Persons admitted to Office (Alluded to in p. 58).

' I, A. B., do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine, at or after the consecration thereof, by any person whatsoever.' (Since 24th June, 1791, no person can be summoned to make this declaration, or be proceeded for not obvoing such summons. 31 Geo. 3, c. 32, s. 18).

Declaration against Popery, required by 30 C. 2, st. 2, of Peers and Members of Parliament.

'I. A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, that I do believe that in the sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine, into the body and blood of Christ, at or after the consecration thereof, by any person whatsoever: And that the invocation, or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous. And I do solemnly in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsqever, and without any dispensation already granted me for this purpose, by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am, or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the Pope or any other person or persons, or power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning.' (Vide 31 Geo. 3, c. 32, s. 20, as to Exemptions).

Declaration of Fidelity for Quakers, setsled by 8 Geo. I., c. 6. (Alluded to in p. 37).

I, A. B., do solemnly and sincerely promise and declare that I will be true and faithful to king George; and do solemnly,

simperely, and truly, profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked dectrine and position, that princes excommunicated or deprived by the Pope, or any authority of the See of Rome, may be deposed or murthered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, preslate, state, or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclasiastical or spiritual, within this realm.'

Form of Affirmation when used instead of an Oath, settled by the same Statute.

'I, A. B., do solemnly, sincerely, and truly declare and affirm.'

Affirmation of Abjuration, instead of the Abjuration Oath, settled by the same Statute.

I, A. B., do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging. And I do solemnly and sincarely declars, that I do believe the person pretended to be the Prince of Wales, during the life of the late king James, and since his decease, pretending to be, and taking upon himself the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging: and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful against all traitorous conspiracies and attempts whatsoever, which shall be made

s. 2, c. 2.

3. c. 2.

and truly.'

against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traitorous conspiracies which I shall know to be made against him, or any of them. And I will be true and faithful to the succession of the crown against him the said James, and all other persons whatsoever, as the 1 W. & M. same is and stands settled by an Act, intituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, to the late queen Anne, and the heirs of her body, being Protestants; and as the same, by one other 12 & 13 W. Act, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is and stands settled and intailed, after the decease of the said late queen, and for default of issue of the said late queen, to the late princess Sophia, Electoress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition. acknowledgment, renunciation, and promise, heartily, willingly,

> Form of Affirmation to be used by Moravians, instead of an Oath, imposed by 22 Geo. 2, c. 30. (Alluded to in p. 37).

^{&#}x27; I, A. B., do declare, in the presence of Almighty God, the witness of the truth of what I say.'

(A).

No. 6.

Indictment for disturbing a Congregation of Protestant Dissenters, on the 52 Geo. 3, c. 155.

MIDDLESEX (to wit).—The jurors for our Lord the King, upon their oath, present, that A. B., late of , in the county of Middlesex, the parish of labourer, on the day of , in the of the reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the parish aforesaid, in the county aforesaid, a certain congregation of [Protestants Dissenting from the Church of England] (a), permitted and authorised by the said act, being then and there lawfully assembled for religious worship, in a certain [chapel] (b) there situate and being, and then and there duly certified, registered, and [recorded] (c), pursuant to the [statute] (d), in that case made and provided, the doors of the said chapel then being neither locked, bolted, barred, nor otherwise fastened, so as to prevent any persons entering therein during the time of such meeting and assembly, then and there, during the time of divine wor-

(d) Or statutes, if certified under more than one.

⁽a) The congregation should be an described in the first count, as to correspond with the registration.

⁽b) Meeting-house, dwelling-house, or other description used in registration.

⁽c) If registered at the General or Quarter Sessions, it may be as well to state in the first count where the place is registered.

temptuously, did disquiet and disturb, [insert the kind of disturbance, as by talking loudly, &c.], in contempt of public worship, to the evil example of all others, in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present that the said A.B. afterwards, to wit, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully, wilfully, maliciously and contemptuously, disquiet and disturb a certain other congregation of Protestants, being then and there lawfully assembled for religious worship, in a certain other chapel, there situate and being, the said last mentioned chapel, then and there being duly certified and registered, pursuant to the statute in that case made and provided, in contempt of public worship, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace

of our said Lord the King, his crown and dignity. Fine 40l. for each defendant. This offence may be tried at the Sessions, 52 Geo. 3, c. 155, s. 12: or in the King's Bench, see 3 Bur. 1683; or at the Assizes, if removed from the sessions by certiorari.

5 T.R. 552. 4 M. & S. 508.

It will be easy to frame a similar indictment, on the 1 W. & M., s. 1, c. 18, 'for willingly and of purpose, maliciously, or contemptuously, coming into a chapel or congregation, permitted by this act

Second

Vide first count.

Vide first

to disquiet or disturb the same: the fine under this act is only 201.; but Quakers are protected by it.

Any person present may, without using undus violence, remove an individual so misbehaving in a place of worship, if the nuisance cannot be otherwise abated. I Mod. Rep. 168.

Sacrilege, it would seem, cannot be committed in a Protestant Dissenting Chapel, on the statutes 23 H. 8, c. 1, s. 3; and 1 Ed. 6, c. 12, s. 10.

See also for other precedents, Chitty's Criminal Law, vol. 2, from p. 24 to 34 inclusive; and vol. 4, p. 68.

(A).

No. 7.

Form of Certificate of a Chapel or Meeting House:-

The certificate of a building, to be used as a chapel or meeting-house, may be addressed either to the justices of the General or Quarter Sessions of the peace for the county, city, or place, in which it is situated, or to the bishop of the diocese, or to the archdeacon of the archdeaconry.—It had better be signed by two or three Protestant Dissenters.

Form of Certificate to the Quarter Sessions.

To the Worshipful his Majesty's Justices of the Peace, acting in and for the county of , in General Quarter Sessions (a) of the peace for

⁽a) Or General Sessions of the Peace.

the said county assembled; WE, whose pames are hereunder written, do hereby certify that a certain building, situate in the parish of . in the county of , in the possession or occupation of , is intended to be used as a chapel for religious worship, by Protestants Dissenting from the Church of England, under and by virtue of a statute of the first year of King William and Queen Mary, intituled, An Act for exempting their Majesties' Protestant Subjects dissenting from the Church of England, from the Penalty of certain Laws; and, also, under and by virtue of a statute of the fifty-second year of King George the Third, intituled, An Act to repeal certain Acts, and amend other Acts, relating to religious Worship and Assemblies, and Persons teaching or preaching therein*. And we request that this certificate may be registered and recorded by the clerk of the peace.

Dated this

day of

, 18

(Signed) A. B.

C. D.

E. F.

* It is advisable to certify under both these statutes, in order to indict or recover on the Riot Act, which, it seems, requires registration under the 1 W. & M. s. 1, c. 18.

Form of Certificate to the Bishop.

To the Right Reverend Father in God by divine permission Lord Bishop of

[Insert, as in the first precedent, adding to the

county in which the chapel is situate, "and in the diocese of "then down to the asterisk, and conclude thus]. And we request that this certificate may be registered in the Commissary's court of your Lordship.

Dated, &c. Signed, &c.

Form of Certificate to the Archdeacon.

To the Reverend, &c. [with the proper additions]
Archdeacon of the archdeaconry of , in
the county of , within the diocese of ,
[Insert as in the first precedent, adding to the county
in which the chapel is situate, " and in the archdeaconry of , within the diocese of ,"
to the asterisk, and then conclude thus]. And we
request that this certificate may be registered in the
court of your archdeaconry.

Dated, &c. Signed, &c.

It may be advisable to certify "Dissenting burial places," religious worship being not unfrequently performed in them.

The precedent will be like the others, except in the description, which may be a "certain piece, or plot of ground, or inclosed space (as the case may be), intended to be used as a place of burial, and for the occasional celebration of religious worship," by Protestants, &c.: and it may not be necessary to insert the act of 1 W. & M., s. 1, c. 18.

(A).

No. 8.

Form of Certificate of Birth, for Registration at Dr. William's Library, in Red Cross Street, near Cripplegate, London.

THESE are to certify that A. B., son (or daughter) of C. D., and E., his wife, who was the daughter of F. G., was born at , in the parish of , in the city (or county) of , on the day of , 18 , at whose birth we were present.

I. K. L. M.

Registered at Dr. Williams's Library, Red Cross
Street, Cripplegate, London, the day of
N. O. Register.

Two of these certificates must be carefully filled up; the date of the birth being in words at length, and not in figures; and they must be signed where the letters I. K. and L. M. are placed, by two or more persons, who were present at the birth; and, if such persons cannot write, their marks should be attested by at least two credible persons, who should also add their places of abode.

Any person may have a child registered while the witnesses to the birth are living; but the sooner it is done after the birth the better.

(B).

No. 1.

Trust Deed for a Dissenting Chapel, by Lease and Release (a).

This Indenture, made, &c. Between [the Vendor] of the one part, and [the Trustees] of the other part. Whereas, &c. [recital of Vendor's Recitals. title and contract]. Now this indenture with nesseth, that in pursuance of the said agreement, tion. and in consideration of the sum of——l., &c. (b), by the persons, parties hereto, of the second part, to the [Vendor], paid, &c. in full, for the purchase, &c., the receipt, &c., the said [Vendor] Hath granted, bargained, sold, aliened, released, and Operative confirmed; and, by these presents, Doth, &c., unto the said [Trustees], and all other persons, (if any), parties hereto of the second part, in their actual

(a) A conveyance for a charitable purpose should, in all practical cases, be made by lease and release, founded on an actual purchase: for where made by bargain and sale on a gift, if the donor is insolvent at the time, or dies within twelve calendar months next after the execution of the deed, it becomes void. A bargain and sale, where necessary, as likewise a conveyance by lease and release, must be by indenture, executed in the presense of two or more credible witnesses, and be enrolled within six calendar months afterwards at the latest, to comply with the stat. 9 G. 2, c. 36; and in the case of a bargain and sale, within six lunar months, where lands of freehold tenure, and for a freehold estate are conveyed, and no lease for a year is used, to comply with the stat. 27 H. 8, c. 16; and conveyances of property in the counties of York and Middleser should be immediately registered, to comply with the statutes in that behalf.

behalf.

(b) Where the conveyance is founded on a gift, a mere nominal consideration must be inserted.

Parcels.

possession now being, &c., (setting out lease for a vear), their heirs and assigns. ALL, &c. (a) [here Habendum describe the property to be conveyed]. To HAVE and TO HOLD the said [premises], with their appurtemances, unto, and to the use of the said [Trustees], and all other persons, (if any), parties hereto, of the second part, their heirs and assigns, for ever. UPON THE TRUSTS, and for the ends, intents, and purposes hereinafter expressed and declared, of and concerning the same: that is to say, upon TRUST. that the said Trustees, for the time being, or the survivors or survivor of them shall, as soon as conveniently may be, after the execution of these presents. out of the monies now or thereafter possessed by them or him, for that purpose, erect, or permit

to be erected, on the said [premises], hereby

trusts.

To erect.

(a) Freehold and leasehold may be comprised in the same deed, and even in the same clause. But there should be two clauses of habendum, one for the freehold, the other for the leasehold; and there must be no power of revocation, reservation, trust, condition, limitation, clause, or agreement for the benefit of the donor or grantor. In case of leasehold, the original lease should be recited, and the habendum be to the trustees, their executors, administrators, and assigns, for the residue of the term. And as a provision for a future purchase residue of the term. And as a provision for a nature purchase of the fee for the benefit of the trust, a clause might be inserted, enabling the trustees to assign, in order to protect the inheritance. In case of copyhold, add, AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid the said [vendor] did, on the day of the date of these presents, (being a surrender in effect, but an indenture in form) personally go before the steward of the manor of , and out of court by the rod, surrender out of his hands into the hands of the [lord] of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor, ALL, &c., TO THE USE of the said [trustees] and all other persons (if any), parties hereto, of the second part, their heirs and assigns for ever, UPON THE TRUSTS, &c.

granted and released, [a chapel, vestry room], and such other offices as they may deem necessary for the purposes hereinafter mentioned; and shall, from time to time, and at all times thereafter, permit the To permit said [chapel, &c.] so erected, to be used, occupied, and enjoyed, as a place of public religious worship, for the service of God, by Protestant Dissenters, of the denomination, &c., and acknowledging and maintaining the doctrines and practice, &c. (a). AND UPON FURTHER TRUST, to raise, if they shall To mortthink proper, by mortgage or annuities, chargeable upon the said premises, or any part thereof, such sum or sums of money, as may be necessary to complete the erection and fitting up of the said [chapel, &c.], and to carry on the worship of God

(a) Great care should be taken in describing the religious tenets for the inculcation of which the trust is created.

The following forms are frequently required :-

"Permit and suffer the said piece of ground to be, from time to time, and at all times hereafter, used as a burial place for the interment of deceased members of the said society of Protestant Dissenters and others, according to the regulations to be prescribed by a majority of the men-members for the time being of the church or society attending the said chapel, duly assembled in church-meeting for that purpose."

If the premises are intended to be used as an academy,

say,
"Permit and suffer the said messuage or tenement, and hereditaments, hereby granted and released, to be used, occupied, and onjoyed, as and for an academy, or school, or place of classical and religious instruction for young men, devoted to the ministry among Protestant Dissenters; or otherwise, in such manner, and under such regulations, and with full power to alter and vary such regulations, as a majority of the Trustees, for the time being, together with a majority of the men-subscribers, for the time being, to such academy, who shall have been subscribers thereto for [twelve] preceding calendar months, shall, at any public meeting to be convened for such purpose, and held after a week's previous notice thereof, from time to time, order and direct." To appoint Ministers.

therein. And also, from time to time, until a church or society shall be formed, as bereinafter mentioned, to appoint suitable ministers, acting and maintaining the doctrines and practice aforesaid, to preach and perform the usual acts of religious worship in the said chapel, and to remunerate them out of the trust funds, as they, the said Trustees, shall To appoint think fit. AND it is hereby declared and agreed. a Treasurer. that, so soon as conveniently may be, after the execution of these presents, and on the in every year, or within fifteen days after that day. until a church or society shall be formed, as hereinafter mentioned, a meeting shall be held by the Trustees for the time being, for the purpose of choosing a treasurer: and the person then chosen for that purpose, by a majority of the said trustees then present. shall be treasurer of the funds of the said trust, until the appointment of a new treasurer, at the next annual meeting; and shall receive and take all monies, subscribed and paid by any person or persons, towards the erection of the said [chapel,

> &c.1. or the support of the public worship of God therein, or for any other of the purposes of this trust. And such treasurer shall keep a book of accounts, in which shall be regularly entered all receipts and disbursements, and all debts due and owing to, from, or on account of the said trust premises, which said book shall be, at all seasonable times, open to the inspection of the trustees for the time being, and at each of the said annual meetings, shall be examined, and (if correct), allowed by the trustees then present. AND it is hereby further declared and agreed, that

the said monies so collected and received as aforesaid. shall be applied, in the first place, to the payment of all government and parochial or other rates and taxes of right payable, and premiums of insurance due, in respect of the said trust premises; in the next place, to the repayment, with lawful interest, of all monies, and to the reimbursement of all costs and expenses, lawfully expended or incurred by the said Trustees, in the due execution of the trusts hereby in them reposed: in the third place, to the discharge of all necessary costs and expenses, from time to time incurred, in repairing, cleansing, lighting, and attending, the [chapel, &c.] so erected as aforesaid, and in decently conducting therein the worship of God. And lastly, to the discharge of all mortgages, annuities, or other incumbrances on the said trust premises, made or granted pursuant to the power hereinbefore given to the Trustees for the time being. for that purpose. And it is hereby further declared To sell, &c and agreed, that if, at the expiration of from the date hereof, a church or society, consisting of at least men members, acting and maintaining the doctrines and practice aforesaid, shall not be formed, having the said [chapel] for their usual place of worship, it shall be lawful for a majority of the Trustees, for the time being, acting in the trusts hereof, at their discretion, either to continue the worship of God, under their own direction and management, until such a church or society is formed. but subject, nevertheless, to the provisions hereinbefore made respecting doctrine and practice, or otherwise absolutely to sell and dispose of the said

trust estate and premises, or any part or parts thereof, when, and in such manner as they shall think fit, and to convey the said premises so sold. to the purchaser or purchasers thereof, his, her, or their heirs or assigns, or as he or they shall direct or appoint, freed and absolutely discharged from these presents, and from the trusts hereof. And after applying the money arising from any such sale, to the discharge of all incumbrances, debts, or liabilities, lawfully incurred, by virtue of these presents, to apply the surplus, if any, to such charitable purposes as the majority of them, the said trustees, for the time being, shall think fit: PROVIDED ALWAYS. and it is hereby declared and agreed, that if, at any time before such absolute sale as aforesaid, a church formation of or society, consisting of the said number of men members acknowledging and maintaining the doctrines and practice aforesaid, shall be regularly formed, having the said [chapel] for their usual place of worship, such formation to be notified under the hands of, at least men-members, by indorsement on these presents, that then the powers and authorities hereinbefore given to the said trustees, or the major part of them, for the time being, shall cease anti he void And thereafter the trustees or trustee for the time being shall be seised of the said trust Second set estate and premises, with the appurtenances, UPON THE TRUSTS, and for the ends, intents, and purnoses hereinafter expressed and declared of and concerning the same. But subject, nevertheless, to all mortgages, annuities, debts, or other incumbrances on the said trust premises, lawfully con-

Proviso for determination of trusts on a church.

of trusts.

tracted and incurred under the former trusts, and not then discharged; that is to say, upon Thus I for the church or society so formed as aforesaid, and acknowledging and maintaining the doctrines and practice aforesaid; and at all times thereafter to permit the said Topermit to [chapel, &c.] to be used, occupied, and enjoyed by the saidchurch. said church or society, so maintaining the doctrines and practice aforesaid. And also to permit such person or persons, as shall be from time to time thereafter nominated and chosen, either as permanent or interim ministers, in manner hereinafter mentioned, to officiate in the said [chapel]. And it is Appointhereby declared and agreed, that at all times after ment of ministers. the formation of the said church or society, as aforesaid, the choice and appointment of a permanent minister shall be vested in a majority of the men and women members, duly assembled for that purpose, according to the usual mode observed in churches of the like denomination, who shall for six months previously to the said choice and appointment have been in full communion with the said church or society, without any control of the said trustees, but who may nevertheless vote on such occasions, if members in full communion as aforesaid. Pro-VIDED always, that no person shall be chosen, permitted, or continue to officiate as a permanent minister in the said [chapel, &c.] who does not acknowledge and maintain the doctrines and practice aforesaid. And that during such time as the pastoral office shall be by any means vacant, the power of providing interim ministers shall be vested in the descons of the said church or society, for the time being,

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er the major part of them, who shall make appears interim minister such reasonable remuneration out of the trust funds in their possession, as they shall from time to time think fit. And the said deacons shall be chosen and appointed by the said church or society from among the members in full communion, in the same manner as hereinbefore mentioned, for the choice of a permanent minister. Provided also, nevertheless, that it shall be hewful for the minister, for the time being, with the consent of a majority of the men and women members, entitled to vote, as aforesaid, to admit to the sacrament of the Lord's supper, but not to church membership, any person or persons not acknowledging or maintaining the peculiar doctrines or practice aforesaid. And it is hereby declared and agreed, that on the Monday in every year, after a church or society is

Appointment of a treasurer.

formed as aforesaid, or within fifteen days after that day, a meeting of the men members, entitled to vote as aforesaid, and of the Trustees for the time being, shall be held, for the purpose of choosing a treasurer; and the person then chosen for that purpose, by a majority of the said meeting, shall be treasurer of the funds of the said trust estate, and of the said church or society, until the appointment of a new treasurer, at the next annual meeting for that purpose. But the deacons so chosen as aforesaid, shall let the pews and seats of the said [chapsl, &roi], and sollect and receive all monies subscribed and paid towards the support of the public worship of God the said treasurer for the time being, who, out of the

Deacons to let pews, &c.

monies received by him as treasurer as aforestid, shall, in the first place, pay and discharge all government and parochial, or other rates and taxes of right payable, and premiums of insurance due, in respect of the said trust monies; in the next place, renev antireimburse himself and the said trustees, all monies. costs, and expenses lawfully expended or incurred in the due execution of the trusts hereby in them reposed; and, in the third place, pay and discharge all costs and expenses lawfully incurred in and about the said [chapel, &c.], and in decently conducting the public worship of God therein: and, also, at the request, and by the direction of a majority of the menmembers for the time being, entitled to vote as aforesaid, in church meeting duly assembled for that purpose, pay off and discharge all mortgages, ananities, and other incumbrances on the said trust premises. lawfully contracted by virtue of these presents; and, lastly, pay over to the permanent minister of the said church or society, at such stated times, and in such manner as shall have been previously agreed on between the said church or society and the said minister for the time being, such sum or sums of money, by way of stipend for his services, as shall have been previously agreed on between the said parties. And if there be any surplus after the payment of the said various items of expense, the same shall remain in the hands of the said treasurer, to be disposed of from time to time, as a majority of men-members for the time being entitled to yote as aforesaid, and duly assembled for that purpose, shall further direct or appoint. And the mid treasurer and deacons shall respectively keep

tered all monies received and paid in their respective departments. And in the treasurer's book shall likewise be entered, a statement of all disbursements and debts due and owing to, from, or on account of the

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gage.

said trust premises, and all sums of money for which he is accountable to the said church or society; which said books of account shall be at all reasonable times open to the inspection of the said church or society. or of persons deputed by them for that purpose: and at each of the said annual meetings last mentioned, for the appointment of a new treasurer, shall be examined, and if correct, allowed by the members then present. And upon this further trust, that the said trustees or trustee for the time being, shall at any time or times thereafter, when thereunto requested by a majority of the men-members for the time being, entitled to vote as aforesaid, in like manner duly assembled for that purpose as aforesaid, raise such sum or sums of money as shall be directed by the said majority then present, by way of mortgage or annuity, chargeable upon, or payable out of all or any part of the said trust estate, and likewise convey and assure the same, or any part thereof, for that purpose. And Also, when thereunto requested by a majority of the men-members, entitled to vote as aforesaid, in like manner duly assembled for that purpose, absolutely make sale of the said trust estates, of any part thereof, and of the fee-simple and inheritance thereof, either by public auction or by private

contract, in such manner as the said majority then present shall think fit and convey the same trust

To seil.

estates, when sold, to the person' or persons who shall agree to become the purchaser or purchasers thereof, freed and discharged from these presents and the trusts thereof. And Also, at any time or times. at such request as aforesaid, convey the said trustestates, or any part thereof, to any person or persons in exchange for, or in lieu of, any other hereditamiles of [the change. ments, to be situate within aforesaid, as to a majority of menmembers, entitled to vote as aforesaid, in like manner duly assembled for that purpose, shall appear more convenient for the purposes aforesaid, or any of them. AND UPON THIS PURTHER TRUST, that the said trustees or trustee, for the time being, shall stand and be seised of the hereditaments, which shall be And stand taken in exchange as aforesaid, upon the same or seised. the like trusts, and to and for the same or the like ends, intents, and purposes, as are herein-before expressed and declared concerning the hereditaments hereby granted and released, or as near thereto as may be, and the nature of the hereditaments to be so taken in exchange, and the purposes of convenience for which they shall be taken in exchange, will admit. And upon this further trust, that the said trustees or trustee, for the time being, shall stand possessed of the money, which, from time to And postime, shall be received on any sale, or mortgage, or sessed, &c. exchange, which shall be made under the trusts herein-before declared, upon TRUST, to invest, lay out, or dispose of the same, in such manner, and for such purposes, for the benefit of the said society of Protestant Dissenters, of the denomination aforesaid, or

To ex-

Proviso for extraordinary meetings.

enlargement, repair, or rebuilding of the trust premises, or any of them, or otherwise, as a majority of the men-members, entitled to vote as aforesaid, in like manner duly assembled for that purpose shall direct. PROVIDED ALWAYS, that no extraordinary meetif of the said church or society shall be holden for any of the purposes aforesaid, nor for any other purpose in pursuance of this trust, unless oral notice thereof be given by the minister, or one of the deacons, in the said chapel, on the next preceding Sunday, during or immediately after divine service in the morning, or if divine service is not performed at that time therein, unless a written notice thereof be on or before that morning affixed to each of the principal external doors of the said chapel, signed by one of the men-members, of the said church or society, entitled to vote as aforesaid, or by a trustee er treasurer for the time being, nor shall any such meeting be held earlier than the Wednesday next after such notice is published as aforesaid. VIDED ALSO, that lists of the members entitled to vote at any meeting of the said church or society. shall be entered in a book to be kept for that purpose, and signed at each meeting, with the consent of a majority of the members there entitled to vote, by the person presiding, which said lists shall be binding and conclusive on all parties. the same book shall be entered all and every the acts, resolutions, and proceedings of each meeting. which shall be produced at every subsequent meeting for similar purposes, and the proceedings of the

last meeting be read over, if required. AND UPON THIS FURTHER TRUST, that, if the said church or society shall be totally dissolved or dispersed, and the public worship of God in the said chapel discontinued for the space of two years together. then the said trustees or trustee, for the time being, shall convey, and assure the said trust. To sell. estates hereby granted and released, and, also, the hereditaments, to be received in exchange as aforesaid, unto such person or persons, in such manner and for such purposes, either religious or civil, as two-thirds in number of those men-members of the said church or society of Protestant Dissenters, who, at the time of such dissolution or dispersion, shall be, and for one year next preceding such dissolution or dispersion, shall have been, subscribers to the support of the public worship of God in the said chapel, and during the like period shall have been members of the said congregation and communicants therein. shall appoint, by any writing under their hands. Ann it is hereby further declared and agreed, that the Purchasers person or persons who shall become the purchaser or &c. not acpurchasers, or take a mortgage or mortgages of all countable. or any part of the said trust estates, his, her, or their beirs, executors, or administrators, shall not be obliged to see to the application of the money to be advanced or paid by him, her, or them, respectively, as the consideration of such purchase or purchases, mortgage or mortgages; nor be answerable or accountable for the mis-application or non-application of the same money, or any part thereof, after the same shall have been paid to, or to the order

Receipts of

of the said trustees or trustee for the time being under these presents; AND that every receipt which shall be given by the said trustees or trustee, for the time being, for such purchase or mortgage money, or any part thereof, shall be a good, valid, and sufficient acquittance and discharge for the sum or sums of money which therein or thereby respectively shall be acknowledged or expressed to have been received; AND that every sale and mortgage which shall be

made, and contract for sale which shall be entered

Sales.

into, and conveyance which shall be executed, by the said trustees or trustee for the time being, pursuant to the trusts hereinbefore declared, shall be

Mortgages, &c. valid.

For new appointment of trustees.

suant to the trusts hereinbefore declared, shall be binding and conclusive on all persons claiming any benefit or interest under the trusts hereinbefore contained. PROVIDED FURTHER, and it is directed. that when and as often as at any time thereafter the said trustees shall be reduced so as not to exceed the number of acting trustees of the said trustestate, the vacancy in the number of trustees shall be supplied by the appointment of so many additional persons, being Protestant Dissenters, as will make up the number of trustees, such appointment to be made by a majority of the men-members for the time being entitled to vote as aforesaid, duly assembled for that purpose, with the consent and approbation of the surviving and continuing trustees or trustee; and that all such conveyances shall be made and executed. at the expense of the trust-estate, or the funds of the congregation attending the said chapel, as shall be necessary or deemed advisable for vesting the said trust-estates in the then acting trustees, or trustee.

jointly, with such additional trustees: and that the trustees or trustee and also the treasurer shall be Trustees, entitled to deduct and retain all the costs, charges, according to imbasses and expenses of, and attending the execution of themselves. the trusts reposed, or to be reposed in him or them, under or by virtue of these presents. Pro-VIDED. LASTLY, and it is hereby declared and Arbitration agreed, that if at any time hereafter, any difference, clause. question, or dispute, shall arise among the trustees for the time being, before the formation of a church or society, or among the members of the church or society after its formation, or between them or any of them, and the said trustees, or between or among any other persons acting under and by virtue of these presents, or bound by the provisions thereof, touching the due execution of the trusts hereof, the construction; of these presents, or touching or concerning any other matter or thing herein contained; then in case such difference, question or dispute, shall not be amicably adjusted between the parties within twenty days next after the same shall arise, it shall be referred to the arbitration of so many indifferent persons, being Protestant. Dissenters, as there may be parties to the said difference, question or dispute, one to be chosen by each of the said parties thereto; or in case any one or more of the said parties shall neglect or refuse to join in such nomination, for seven days after notice given by either of the other parties of intention to refer and nomination of a referee, then the referees or referee of the nominating parties or party, shall proceed to arbitrate without waiting for the appointment of the other referees. And the said referees,

if more than one is nominated, shall, in the first place, and before they proceed to the matter in difference, question or dispute, by writing under their hands, appoint an umpire, to be chosen by a majority of the said referees, in case there are more than two, and if such referees, within forty days after the matter in difference question or dispute is referred to them, cannot agree in an award touching the same, then the said matter shall be referred to the arbitration of the said umpire, who shall make his determination in writing under his hand within sixty days after his appointment: and the order or determination of the said referees or referee, or of the said umpire, in writing under their or his hands, respectively, within the times limited, touching the matter so referred to them or him, or any part thereof, shall be binding, not only on the actual parties to the said difference, question or dispute, but also on all persons acting under or by virtue of these presents, or in any manner bound by the provisions thereof; provided always, nevertheless, that in all cases where the matter to be referred does not necessarily involve all the persons interested in or bound by these presents, such of the persons not necessarily involved therein, if residing within the realm, and the place of his abode can be discovered, shall have notice thereof in writing, to the intent that all may have the option of taking a part in the said matter so to be referred, and in the appointment of referees as aforesaid. And it is hereby further agreed, that a reference under these presents, shall, on the application of any one of the parties thereto, be made a rule of such one of his majesty's

courts of Record, as the persons or person making the award shall direct. And that no suit at law, or bill in Equity, shall be instituted by any one of the parties to the matter referred against any other party thereto, touching the same, until the said referees, referee or umpire, have, or has declined, or omitted to make their, or his award, within the times respectively limited in that behalf, nor against the said referees, referee or umpire, touching the matter so referred; and that the several parties to the said reference shall consent, if necessary, or required by the said referees, referee or ampire, to be examined on oath respecting the matter so referred; and all persons acting under or bound by these presents, shall, when required by the said referees, referee or umpire, produce for their or his inspection, all books, documents, and other matters and things in their custody or power relative to the matter so referred; and lastly. in case all, or any, or either of the said referees or the said umpire, or any persons or person substituted for them, shall die before making their award within the times respectively limited in that behalf, then it shall be lawful, in case of the death of a referee, for the party so appointing him, or of an umpire for the referees so appointing him, from time to time, to substitute another person respectively, who shall have the same power as an original referee or umpire; and the referee or umpire, for the time being, shall adopt and carry on the proceedings and resolutions already completed without commencing de novo, so as the same shall appear in writing, under the hands of the former referees or umpire, or some

of them; and this provise and agreement shall extend as fully to the award of the referees, or umpire, for the time being, as to that of any original referees or umpire (a). In witness, &c.

Trust Deed for a Wesleyan Chapel. This Indenture, made, &c. Between A. B.

[the vendor], of the first part: X. Y. [a releasee to uses, of the second part; and C. D., E. F., G. H., I. K., L. M., and N. O. [the persons who, together with A. B., are to be trustees], of the third part. WHEREAS, &c. [recitals of vendor's title and con-Recitala. tract]. Now this Indenture witnesseth, that

in pursuance of the said agreement, and for and in consideration of the said sum of --- l. &c. by the Considerasaid persons, party hereto of the third part, to the

> (a) The arbitration clause has been added in compliance with the suggestion of the Lord Chancellor, who in the case of the Attorney General v. Fletcher and others, observed, that cases might happen in which disputes might arise, which should have been provided for by some sort of friendly tribunal among Protestant Dissenters themselves, which the deed should declare to be final; instead of putting themselves to great expense, to the expense of the Institution to which they belong, and to the expense in some measure of the religious character of the country.

> Covenants, if deemed necessary, should be inserted in a separate instrument; and the operative words and trusts, varied as the nature of the property and the intentions of the parties require.

Parties.

tion.

said A. B. paid, &c., the receipt, &c., is in full for the purchase of, &c. And also in consideration of the sum of 10s. by the said X. Y. to the said A. R. paid, the receipt, &c. He the said A. B. (at the request and by the direction of the said several persons, parties hereto, of the third part), HATH grant- Operative ed, bargained, sold, aliened, released, and confirmed, words. and by these presents DOTH, &c., unto the said X. Y. (in his actual possession, &c.), and to his heirs, All, Parcels. &c. [describe the property to be conveyed], together with all, &c. insert general words applicable to the premises]. To have and to hold the said [premises] Habendum. unto the said X. Y. and his heirs: But to the use of the said A. B., C. D., E. F., G. H., I. K., L. M. and N. O., and all other persons, parties hereto, of the third part (if any), their heirs and assigns, for ever, upon the trusts; and for the intents and purposes, and with, under, and subject to the powers, provisions, declarations, and agreements hereinafter expressed and declared of and concerning the same (that is to say). Upon TRUST, that they the said Trusts. A.B. and the parties hereto of the third part, and the survivors and survivor of them, and the heirs and assigns of such survivor, and the trustees and trustee for the time being, acting in the trusts hereof, shall, out of the monies now or hereafter possessed by them for that purpose, and as soon after the execution of these presents as conveniently may be, erect upon To erect. the said piece of ground, and from time to time hereafter, whenever it shall be necessary, repair and rebuild a chapel or house of religious worship, with a vestry-room, and such other offices as they shall deem

To permit to be used.

necessary: AND UPON FURTHER TRUST, to permit and suffer the chapel or house of worship so erected, with the appurtenances, to be used, occupied, and enjoyed, as and for a place of religious worship, by a congregation of Protestants of the denomination of METHODISTS, in the connexion of the late Rev. John Wesley: and do and shall permit and suffer such person and persons to preach, expound, and perform the usual acts of religious worship therein, as shall be approved at the yearly Conference of the Methodists in the said connexion, to be held in such manner, and at such time and place as shall be from time to time appointed, under the orders and regulations of a certain Deed Poll, bearing date on or about the 28th day of February, 1784, under the hand and seal of the said Rev. John Wesley, enrolled in his Majesty's High Court of Chancery, and no other, without the consent of the Superintendent Preacher for the time being of the circuit in which the said intended chapel or house of worship shall be situated, but with his consent such local preacher as shall be duly appointed, according to the rules of the said denomination of Methodists. PROVIDED ALWAYS, that no person whatever shall at any time hereafter be permitted to preach or expound, or perform the usual acts of religious worship in the said chapel or house of worship, who shall therein maintain any doctrine or practice contrary to the doctrine and practice approved and enforced in and by certain notes on the New Testament, commonly reputed to be the notes of the said John Wesley, and in and by the first four volumes of sermons commonly

reported to be written and published by him. AND To let UPON FURTHER TRUST, from time to time, and at all pews. times hereafter, to let the pews and seats in the said chapel or house of worship, and to collect and receive the rents, profits, and income to arise in any manner from the said premises (excepting always monies which shall from time to time arise from collections duly made therein for other purposes than for the purposes of the said chapel or house of worship); but not by way of anticipation, further than for the quarter or half-year immediately following the quarter-day next after the day of the receipt AND to stand and be possessed of the money so to arise from the said rents, profits, and income (except as aforesaid), upon TRUST, thereout to pay in the first place such government and parochial To pay. and other duties and taxes as are from time to time lawfully payable in respect of the said premises; and then to retain and reimburse themselves respectively all costs, charges, and expenses lawfully incurred and paid by them in the due execution of the trusts hereby in them reposed; and, in the third place, thereout to pay and discharge the necessary costs and expenses from time to time incurred in repairing, cleansing, lighting, and attending the said chapel or house of worship so to be erected and built as aforesaid, and in decently conducting therein the worship of God and the purposes of religious instruction; and also in insuring the said trust premises against loss or damage by fire or otherwise; and, generally, in liquidating any debts, costs. charges, and expenses at any time lawfully incurred

To appoint stewards.

any of the provisions aforesaid. AND ON FURTHER

TRUST, to pay and apply any surplus money remaining after the payment of all such just debts, costs, charges, and expenses as aforesaid, to the general purposes of promoting religious worship and instruction amongst the said denomination of Methodists, in the circuit in which the said chapel or house of worship and premises shall be situated. And it is hereby declared and agreed, by and between the said parties hereto, that it shall be lawful for the trustees and trustee for the time being, acting in the trusts hereof, from time to time, and at all times hereafter, at their discretion, to appoint any person or persons to the office of steward of the said chapel or house of worship, so erected as aforesaid, and to dismiss any person from the said office of steward; and the duty of

kept.

house of worship, so erected as aforesaid, under the direction and superintendence, nevertheless, of the trustees or trustee for the time being, acting in the trusts Books to be hereof. AND it is hereby also declared and agreed. that the said trustees or trustee shall keep a book or books of accounts, in which from time to time shall be regularly entered every receipt or disbursement by them, or any of them received or made; and also all debts due to or owing from or on account of the said trust, premises, or any part thereof; and also all other accounts, matters, and things, necessary for the explanation and understanding of the same, and the due execution of the trusts hereby in them re-

the said steward shall be to attend to the orderly conducting of the business and affairs of the said chanel or posed: and that the said books of accounts, and all documents relating to the said trust premises, shall be regularly audited, at least once in the year, in the month of June, by the Superintendent and the Circuit-stewards for the time being of the circuit, in which the said trust premises shall be situated, and oftener, if the said Superintendent and the Circuitstewards for the time being, by fourteen days previous notice thereof in writing, placed upon the outer door of the said chapel or house of worship, shall so require; and that the signatures of a majority of the said auditors (or the signatures of the persons or person officially acting and signing for them, or on their behalf, and with their knowledge and consent). shall be a sufficient discharge to the trustees or trustee for the time being, acting in the trusts hereof, their and his heirs, executors, and administrators, for all matters relating to the said trust premises included in the said accounts so audited as aforesaid, unless some manifest error shall be discovered therein within one calendar month next after such audit, and then except only as to such manifest error, which may be rectified either at a special meeting summoned for that purpose, or at the next general audit. And further, that the said trustees or trustee shall How far acnot be chargeable nor accountable for any involuntary loss suffered, nor injury done to the trust premises, nor for each other, and in no case for more money than shall be actually received by them or him (a).

countable.

⁽a) When a power to mortgage is thought necessary, it should be inserted here.

agreed, that if the said yearly. Conference shall at any time hereafter think it expedient that the worship of God should be discontinued in the said chapel or house of worship so erected as aforesaid, and that the same and the said piece of ground, or hereditaments, or, any part or parts thereof, should be sold, and shall give notice thereof in writing under the hand of the president of the Conference for the time being, and testified by the seal of the next Conference, to the trustees or trustee for the time being, acting in the trusts hereof, to sell and dispose of the same, or of any part thereof, then the said trustees or trustee shall, as soon as conveniently may be, absolutely sell and dispose of the said piece of ground, chapel, or house of worship, so to be erected thereon as aforesaid, and hereditaments, or such part or parts thereof respecting which such notice as aforesaid shall be given, and shall well and effectually convey and assure the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or otherwise, as he, she, or they shall direct or appoint. freed and absolutely discharged from these presents, and the trusts hereof, and apply the money arising from every such sale, to the discharge of all debts. liabilities, and responsibilities, contracted by virtue of these presents, or in the due execution of the trusts hereof; and subject thereto, to such charitable uses and purposes as the said yearly Conference shall at any future time direct. And it is hereby declared. that the receipts of the trustees or trustee for the time being, acting in the trusts hereof, shall, in all

Power to sell.

Receipts valid.

cases of payment made to them as such trustees as aforesaid, be a full discharge to the person entitled to such receipt, his or her heirs, executors, administrators and assigns, for all purchase monies, or other monies therein respectively expressed and acknowledged to be received. And it shall not be incumbent upon any purchaser, his or her heirs, executors, administrators or assigns, to inquire into the legality of any sale or disposition of the said premises, to be made by the said trustees as aforesaid, nor for them, or any of them, nor for any other person, his or her executors, administrators or assigns, paying money as aforesaid, to see to the application, nor to be answerable or accountable for the loss, misapplication, or non-application of such purchase or other money, or any part thereof, for which receipts shall be so respectively given as aforesaid. PROVIDED ALWAYS, and it is hereby declared and agreed, by and between the said parties hereto, that pointment when and so often as the trustees for the time being, acting in the trusts hereof, shall, by death or by any other means, be reduced so as not to exceed the number of three, then the surviving trustees, in conjuction with the Superintendent preacher for the time being of the circuit in which the said chapel or house of worship shall be situated, shall with all convenient speed nominate and appoint four persons, if there are three surviving trustees desirous of continuing in the trusts hereof; or if there are not three surviving trustees, or being three surviving trustees, if they or any of them shall desire to be discharged from the trusts hereof, then the said surviving trustees or trustee.

New apof trustees.

in conjunction with such Superintendent preacher as aforesaid, shall nominate and appoint so many persons, in either case being members of the said denomination of Methodists, and of the circuit in which the said chapel or house of worship shall be situated, if a sufficient number can be there found to take upon themselves the execution of the trusts hereof, and if not, then being of that and some neighbouring circuit or circuits, to be trustees of the said piece of ground, chapel, or house of worship, and hereditaments, in the stead of the trustees so by death, or by any other means discharged from the trusts hereof, and shall forthwith cause or procure the said piece of ground, chapel, or house of worship and hereditaments, to be legally conveyed or assured to, and vested in such new and such surviving and continuing trustees jointly, or in such new trustees wholly, as the case may be (so as to make and preserve the number of trustees upon every fresh or new appointment of trustees, seven in the whole), but upon the same trusts, and to and for the same intents and purposes, and with, under, and subject to the powers, provisions, declarations, and agreements herein expressed, declared, and contained of and concerning the same. To increase ALSO, that if at any time hereafter, the trustees the number or trustee for the time being, acting in the trusts hereof as aforesaid, shall judge it expedient to increase the number of trustees acting in the trusts hereof beyond the original number of seven in the whole, then and in every such case it shall and may be lawful for the surviving trustees or trustee

of trustees.

for the time being, in conjunction with the Superintendent preacher for the time being, as aforesaid, of the circuit in which the said chapel or house of worship shall be situated, and in the same manner as is hereinbefore directed for the new appointment of the original number of trustees, to nominate and appoint any number of such proper persons as aforesaid, not exceeding, together with such of the surviving trustees, as aforesaid, as shall be desirous of continuing in the trusts hereof, the number of thirty persons in the whole, to be trustees of the said piece of ground, chapel, or house of worship, and hereditaments, and thereupon to convey and assure the said piece of ground, chapel, or house of worship, and hereditaments, so as legally to vest the same in such new and such continuing trustees jointly, or in such new trustees wholly, as the case may be, but upon the same trusts, and to and for the same intents and purposes, and with, under, and subject to the same powers, provisions, declarations, and agreements as are herein expressed and declared respecting the said original trustees. PROVIDED Arbitration LASTLY, and it is hereby agreed and declared, that clause. if at any time hereafter any difference or dispute shall arise among the trustees for the time being. or between them and the superintendent preacher of the circuit in which the said chapel or house of worship shall be situated, or between them and the preachers or persons duly appointed or permitted to perform the usual acts of worship in the said chapel or house of worship aforesaid; or between them and the chapel stewards, circuit stewards, and leaders of classes, connected with the said

chapel or house of worship: or between any of them. or between any persons whomsoever, in any manner bound by these presents, touching the due execution of the trusts hereof, or touching any matter or thing herein contained, and such difference or dispute is ' not expressly provided for by the general rules of - the said denomination of Methodists; then in case such difference or dispute shall not be privately adjusted between the parties within fourteen days next after the same shall arise upon either of the said parties giving notice of the same in writing to the said superintendent preacher, in case he is not one of the disagreeing parties; or if he is one of the disagreeing parties, then to a superintendent preacher of any neighbouring circuit; and in case of notice given to more then one neighbouring superintendent preacher, they shall forthwith select some other neighbouring superintendent preacher, who shall act in the stead of the mid superintendent preacher for the time being of the gircuit in which the said chapel or house of worship shall be situated; and the said superintendent preacher, whose duty it shall be shall thereupon forthwith give notice, in writing under his hand, as well to the parties so disagreeing as to all the other persons mentioned in this proviso, , which notice shall be left at their usual place of abode, appointing a meeting of ,all the said persons to be held within fourteen days from the date of the last-mentioned notice, in the said chapel or house of worship, between the hours of it, cut in the morning and, in the evening. At which meeting the superintendent aforesaid, as the case may be for his deputy, not being one of the disagreeing parties),

shall preside, with power to adjourn the meeting from time to time, as the case may require; but so as the final decision of the matter in difference or dispute is not protracted beyond the space of

days, exclusive of the first day of meeting. And at such meeting all the said persons composing the said meeting shall be entitled to vote in the decision of the matter in difference or dispute. And all books. documents, matters and things relating to the execution of the trusts hereby created, in the custody or power of any person or persons whomsoever, acting under or by virtue of these presents, or bound thereby, which shall be necessary to the explanation and understanding of the matter in difference or dispute. shall be then and there, from time to time, produced and shewn to the said meeting: and the determination and decision of a majority of the persons present at such meeting (and if there shall be an even division of votes, then the said person presiding shall have a double vote) shall be conclusive and binding on all parties, whether present or absent, interested in the said matter, difference, or dispute, and upon all other persons acting under or by virtue of these presents, or bound by the provisions thereof. the said determination and decision shall be then and there reduced to writing, and signed by the president of the said meeting; and if considered necessary by a majority of the said persons entitled to vote as aforesaid, shall be made a rule of any of his Majesty's Courts of Record, which the said majority shall then and there choose... In witness, &c.

For practical observations, see the notes to Appendix (B), No. 1.

B).

No. 3.

New Appointment of Trustees by Indorsement.

This Indenture, made, &c. between AB., CD.,

EF., [the surviving trustees], of the first part; XY., [a release to uses], of the second part PQ., QR., R S., and S T., [the new trustees], of the third part, and V W., [the superintendent Preacher for the time being], of the fourth part. WHEREAS, by the within written Indenture, it is provided, that whenever the trustees therein mentioned shall be reduced so as not to exceed the number of three persons, then the surviving trustees in conjunction with the superintendent preacher for the time being of the circuit in which the piece of ground, chapel, or house of worship, and hereditaments therein mentioned and described, shall be situated, shall nominate and appoint new trustees in manner therein mentioned, and that the said piece of ground, chapel, or house of worship. and hereditaments, shall forthwith be legally conveyed and assured to, and vested in such new and surviving and continuing trustees jointly, or in such new trustees wholly, as the case may be, in manner directed by the said within written Indenture. AND WHEREAS the said AB., CD., and EF., are the only surviving trustees of the said hereditaments and premises (a), and are desirous to continue in the trusts

Parties.

Recital of power.

⁽a) Had any of the trustees resigned or become incapacitated, but were still living; they would be necessary parties to the conveyance of the legal estate.

thereof. Now this Indenture witnessett, that the said A B., C D., E F., and V W. [the surviving trustees and superintendent aforesaid]. HAVE and each and every of them HATH, nominated and appointed and by these presents, Do and each and every of them DOTH nominate and appoint the said PQ... QR., RS., and ST., being members of the said denomination of methodists and of the circuit (a) in which the said chapel or house of worship is situated, [if the case is so], to be trustees of the hereditaments and premises described and comprised in the within written Indenture, in conjunction with them the said AB., CD., and EF., and in the place or stead of the trustees deceased. AND THIS INDENTURE FURTHER WITNESSETH. that for the purpose of legally vesting the said hereditaments and premises in the said surviving trustees and the said several persons newly appointed to be trustees thereof as aforesaid, and in consideration of the sum of 10s., &c. by the said X Y., [the releases to uses], in hand paid, &c. the receipt &c... they the said A B., C D., and E F., I the surviving trustees], have and each and every of them hath granted, bargained, sold, aliened, released, and confirmed, and by these presents Do and each and every of them Doth grant, bargain, sell, alien, release, and confirm unto the said XY., [the releasee to uses], (in his actual possession &c.), and to his heirs, the (pre-

⁽a) It should be stated to what circuit they belong, so at to show that the power has been duly executed,

mises) described and comprised in the within written Habendum. Indenture. To have and to hold the said (premises) described and comprised in, and conveyed by, the within written Indenture with the appurtenences unto the said X Y., [the release to uses] and his heirs, But to the use of the said A B., C D., E F., P Q., Q R., R S., and S T., [the old and new trustees] their heirs and assigns for ever, upon the same trusts, and for the same intents and purposes, and with, under, and subject to the same powers, provisos, declarations, and agreements as are expressed, declared, and contained in and by the within written

intent, or purpose whatsoever.

When there is a power in the deed of settlement to incumber the premises, a covenant against incumbrances should be added, and if the power has been exercised, the incumbrance should be recited, and the tenor of the covenant would be that the old trustees had not incumbered, "except as appears by these presents."

Indenture, and to, for, or upon no other use, trust,

In Witness. &c.

When all the old trustees retire, the party being the release to uses, should be omitted, and the habendum be "UNTO and TO the use of, &c. [the new trustees], their heirs and assigns for ever, upon such and the same trusts," &c.

(B).

No. 4.

Form of Legacy for Charitable Purposes.

LEGACIES for these purposes must be charged and made payable wholly out of the *personal estate*, or they will be void under the Statute of Mortmain.

Legacy for the Use of the Minister for the time being.

I GIVE and bequeath the sum of \mathcal{L} to be raised and paid out of my personal estate to the (deacons) for the time being, of the church or society of Protestant Dissenters, now under the pastoral care of meeting in : and the receipt of the said (deacons) shall be a sufficient discharge to my executors for the same. The said sum to be by the said (deacons) laid out and invested in their joint names in the public funds, upon trust, to pay the interests and dividends thereof from time to time*, to the minister for the time being of the said church or society, for his own use and benefit.

Legacy for the Use of the Poor.

(The same as above down to the asterisk, then) unto and amongst such poor persons, members of the said church or congregation, as the said (deacons) for the time being, shall in their discretion think fit.

Legacy for the Use of the Chapel.

(The same as before down to the asterisk, then) towards the expenses of carrying on the public worship of God in the said place, as the said (deacons) for the time being shall in their discretion think fit.

Any other officer may be substituted for "the deacons," when necessary.

INDEX.

ABJURATION, Oath of, 14, 144.

Absence, from Church, 48, 53.

Acts, of Parliament-vide Table of Statutes.

Affirmation, when and how far admissible, 36.

Forms of, 147, 148.

Allegiance, Oath of, 14, 26, 29, 144.

Appendir, 113.

Contents of-vide Table of Contents.

Articles, the Thirty-nine, when compiled, 2.

Select, under the Toleration Act, 71.

Assemblies, requiring Registration, 89.

not requiring Registration, 88.

fastening Doors of, 91.

disturbing lawful, 92.

coming in to disturb, 93.

when lawful, 18, 88, 91.

Penalties for holding unlawful, 57.

Assurances, what, void as against the Crown, 52.

Attendance, at Church, Laws to enforce, 3, 4, 50. at other Forms of Worship, 4, 54.

BAPTISM, of Dissenters, valid, 21.

Bequest, to Dissenting Ministers, how far valid, 80, 103.

Birth, Form of Certificate of, 154.

Burial, Dissenters' Right to, 21.

Registers of, how far admissible, 43.

CANON LAW, effect of, 23,

Certified Places, Preaching in, 67.

Certificate, of Chapels, &c. Forms of, 151, 153.

of Birth, 154.

Chancery, Court of, 101, 107.

how far it interferes with Dissenters, 107. not bound by strict rules, 108.

construction of trusts adopted by, 109.

Charities, of Dissenters, protected and executed, 21, 44, 101.

Charitable Use, grant to, when void, 102

Christianity, part of the Law of the Land, 19.

Church of England, Laws to protect, 3.

to enforce attendance at, ib., 48.

Church Government, of Quakers, recognised, 43.

Colonies, Laws in. 42.

Conformity, Laws to compel, 3.

Congregation, below the prohibited number, 68, 88.

Constable, Deputy, for Military Purposes, 41.

Courts, of Law and Equity, the Jurisdiction of, 18, 21, 100, 107.

Conventicle Act, 5, 7.

Conventicles, unlawful, permitting to be held, 57.

officiating in, 9. attending, 56.

Corporation Act. 7, 12, 25.

Corporations, Office in, ibid.

Crown, Ecclesiastical Authority of, 3, 46.

DECLARATIONS, against Transubstantiation and Popery—of Protestant Belief—and these made by Quakers, 58. Forms of, 146.

Deeds, Trust, for a Dissenting Chapel, 156.

for a Wesleyan Chapel, 172.

for new Appointment of Trustees, 184.

Defence, of the Realm, Act for, 41.

Devise, when not within the Mortmain Act, 103.

Dissent, Protestant, a Crime only by Statute, 23.

Dissenters, excluded from Office in Corporations, and under the Crown, 7, 25, 29.

from Academical Degrees at English Universities, and Preferments in the Church, 33, 34.

the Rights and Duties of, 20.

regarded by the Courts, 18.

may attain to the Peersge, and sit in the Senate, 21.
demand Baptism, Admission to Sacrament of Lord's
Supper, Burial, and the Marriage Rite, ibid.

Dissenters, Construction of Trusts adopted by, 109.

their trusts and charities pretected, 101,
how far liable to laws against Heresy, 47.
unrepealed statute against, 54.
how far laws against, affected by the Toleration Acts, 44.
may connect themselves with the Synod of Scotland, 107.

Dissenting Ministers, vide 'Ministers.'

Schoolmasters, vide 'Schoolmasters.'
places of worship, vide 'Meeting House.'

Disturbing, lawful assemblies, 93, 94.

Doors, of Assemblies, must not be fastened, 91.

Duties, parochial and tithes, Dissenters liable to, 22.

ECCLESIASTICAL PREFERMENT, exclusion from, 34.

Election, to pastoral office, 77.

Episcopal Ordination, officiating without, 9, 69.

Established Religion, reviling, 6, 47,

Exemptions, from office (incidental), 22, 33.

from taxes, 76.

and disabilities of Quakers and Moravians, 35. local in favour of Quakers, 43. and immunities of Dissenting Ministers, 70. false certificate of, 75.

FEES, not payable for service unperformed, 22.

Fidelity, form of declaration of, 146.

Field Preaching, illegal 69.

Fines, assurances to defeat, when void, 52.

Five Mile Act, (vide Table of Statutes).

HERESY, in what it consists, 45.

laws against, 11, 45.

power of defining and punishment of, 46. how far Dissenters still liable for, 47. Laws against, how far repealed, 3.

INDEMNITY ACTS (annual), 12, 32, Indictment, for disturbing a congregation, 149. Inhabited house duty, 100. Ireland, Laws of, 18. JURIES, Quakers and Moravishus excluded from; 36.

Dissenting Ministers in trade, now liable to, 71.

Justices of the Peace, may require Oaths, 55, 59, 60.

determine recusancy, 50.

of qualifying before, 40.

must administer Ouths if required, 6, 62.

KING, impugning his Ecclesiastical Authority, 53, 54.

LAND TAX, in respect of a Meeting House, 97.

Legery, to ejected Ministers, to itinerant Ministers, to be laid out in Land, 81

for benefit of Dissenting Chapel, 108.
Forms, for Charitable Purposes, 187.

Local Militia, 42, 74.

London Militia, 42.

MANDAMUS, to admit to the Pastoral Office, 77.

to restore to, 78.

to compel Registration of Meeting House, 90.

Marriage Rite, as to Dissenters generally, 21, 35.

as to Quakers, 35, 42.

Laws peculiarly relating to, 88.

Meeting House, who may certify, 90.

fastening the door of, 91. riotously pulling down, &c., 94.

when liable to Rates and Taxes, 97.

Military Service, Provisions as to Quakers, &c., 39.

Militia Acts, affecting Ministers in Trade, 16, 17, 72.

not in Trade, 75.

Local, 42, 74.

Training Acts, 74.

Ministers, Dissenting, Laws peculiarly affecting, 64.

how far protected by Toleration Acts, ibid. unrepealed Statutes against, ibid.

Qualifications for Office, and other Qualifications,

not excused by ex post facto Qualifications, 70.

Ministers, Dissenting, officiating in certified places, 67.

uncertified places, 69.

without censent of the Landlord, 70.

officiating with deeps fastened, ibid.

in Trade, how far exempted, ibid.

from Civil Service and Militia, 72.

not in Trade, how far exempted, 74.

from Civil Service and Militia, 75.

exempted from what taxes, 76.

of election, admission, and deration in Office of,

77.

of suspension, removal and restoration, 78.

of devises and legacies to, 79.

votes of, for members of parliament, 81.

actions for slandering or molesting, 82.

Meretians, disabilities and exemptions of, 7, 35, 27.

Mortmain, Statute of, 102, 104.

Non-conformity, ... negative offence, 20.

OATHS, statutes respecting, 15.

of persons admitted to office, 14, 25, 29, 59.

of allegiance, supremacy, and abjuration, 14, 37, 38.

forms of, 144, 145.

form of affirmation in lieu of, 147, 148.

of allegiance, may be tendered to all persons above the age of twelve. 59.

privations of Quakers and Moravians in respect of, 36.

may be required of whom, 55, 67.

penalties for neglecting to take, 59, 61, 68. fees on voluntarily taking, 62.

Offices, exemption from, 22, 33.

election to, 25, 29, 77.

parochial may be served by deputy, 33.

Overseer, Dissenting Ministers, how exempted, 72.

PARLIAMENT, Dissenters may sit in, 21.

Parochial Duties, Dissenters are liable to, 22, 100.

offices may be served by deputy, 33.

Parochial Duties, Dissenting Ministers exempted, 72.

Pastoral Office, election and admission to, and duration in, 77.
suspension, removal, and restoration, 78.

Peerage, Protestant Dissenters may attain, 21.

Penal Enactments, remaining unmodified, 8, 12, 54, 64. general rule as to, 2, 3.

Places of Worship, vide, " Meeting-house,"

Poor Rate, when Meeting-house liable to, 98.

Popery, form of declaration against, by member of parliament, 146.

Prayer Book, when altered, 23.

depreciating, 48.

omitting to use, or using another, 8, 48, 65.

Preachers and Teachers, vide "Ministers,"

Preaching, in certified places, 67.

in uncertified places, 68.

in a field; the open air; with doors fastened; or without consent of landlord, 69.

Preferment, Ecclesiastical, Dissenters excluded from, 34.

Premunire, when incurred, 14.

Privileges, of Dissenters, 12, 22, 33.

Procuring, or persuading a Minister to officiate by another than the common form of prayer, 48.

QUAKERS, hardships of, 7, 16.

disabilities and exemptions of, 35.

affirmation of, how far admissible, 36, 37.

declarations of, 37, 58, 60,

provision as to, respecting tithes, 37.

respecting military service, 40.

marriage, 35, 42.

burial, discipline and local exemptions, 43.

charities, 44.

meetings, 89.

schoolmasters, 83, 84.

effect of Toleration Acts upon, 44, 49.

Qualifying, for office in Corporations, 25.

under the Crown, 29.

Qualifying for degrees in an English University, 33.

the pastoral office, &c., 66.

in order to obtain immunities, 70.

for the office of Schoolmaster, 83.

LATES and Taxes, on Meeting houses, 97.

Realm, Act for defence of, 41.

Recusancy, and its incidents, 48.

what constitutes, 49.

by what enactments prohibited, 50.

Assurances to defeat fines on, void, 52.

Proceedings on, not invalid for defect in Form, 52.

Fines and Disabilities consequent on, 50, 53.

Penalties against, how far conditionally repealed, 11.

Recusants, persuading others, 53.

Penalties on, 54.

Reformation, its progress, 2.

Registration, assemblies requiring, 88, 91.

not requiring, 89.

Reviling the Established Religion, 47.

Revolution, effect of, 10.

Rights of Dissenters, how far the same with others, 20.

regarded by the Courts, 18.

Riot Act, 94.

SACRAMENT, of the Lord's Supper, 26, 29.

of the Akar, reviling, 47.

Sacrilege, cannot be committed in a Dissenting Chapel, 151.

Schools, Charity and Free, how governed, 87.

Schoolmasters, laws peculiarly affecting, 82.

neglecting to repair to Church, or to obtain a license,

9, 10, 85, 86.

hardships of, 17.

Oaths of to Government, ibid.

specially qualifying, 83.

Penalties on, and of ex post facto Qualification, 84.

their Rights and Liabilities, 87.

Scotland, Laws of, 18.

Slandering a Dissenting Minister, 82.

Statutes, vide " Table of Statutes,"

Supremacy, Oath of, 26, 29, 58, 144.

Synod of scotland, Dissenters may unite with, 107.

TAXES, Land Tax for a Meeting-house, 97.

Window Tax, 99.

Inhabited House Duty, 100.

Parochial and Ward Taxes, ibid.

Dissenting Ministers, exempt from what, 76.

Teaching, without license, 85, 86.

Test Act. 7, 12, 29.

Tithes, Dissenters liable to, 22.

Provisions respecting, as to Quakers, 37.

Toleration Acts, effect of, 24, 44.

Tolls, how far Dissenters exempt from, 22.

Transubstantiation, Form of Declaration against, 145.

Trinity, deniers of, 11, 12.

Trusts, and Charities, of Protestant Dissenters, 101. mode of construing, 77, 109.

Trustees, their power, 77, 79, 105. electing new, 106.

UNLAWFUL SERVICE, Penalties for attending, 55, 66. Conventicles, permitting to be held, 57.

Unitarians, 18, 35, 108.

Universities (English), Dissenters excluded from, 7, 33.

Uses, of a Charity, not to be altered by Trustees; 106.

how far they may be by Court of Chancery, ibid.

VOLUNTARY OATHS, Fees on taking, 62.

Volunteers, respecting providing for, 40.

Voting, for Members of Parliament, 81, 87.

WINDOW Tax for Chapels, 99.

Wrongs, means of redressing, 23.

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